AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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

# CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: 1. Nomenclature changes to chapter VII appear at 59 FR 60299, Nov. 23, 1994, as corrected at 59 FR 66438, Dec. 27, 1994, and at 60 FR 64297, Dec. 15, 1995.

SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAM


| *Part* | | *Page* |
|---|---|---|
| 701 | Emergency Conservation Program and certain related programs previously administered under this part | 7 |
| 707 | Payments due persons who have died, disappeared, or have been declared incompetent | 17 |
| 708 | Record retention requirements—all programs | 19 |


SUBCHAPTER B—FARM MARKETING QUOTAS, ACREAGE ALLOTMENTS, AND PRODUCTION ADJUSTMENT


| | | |
|---|---|---|
| 714 | Refunds of penalties erroneously, illegally, or wrongfully collected | 20 |
| 718 | Provisions applicable to multiple programs | 22 |


SUBCHAPTER C—REGULATIONS FOR WAREHOUSES


| | | |
|---|---|---|
| 735 | Regulations for the United States Warehouse Act | 45 |
| 743 | [Reserved] | |


SUBCHAPTER D—SPECIAL PROGRAMS


| | | |
|---|---|---|
| 750 | Soil Bank [Note] | 59 |
| 760 | Indemnity payment programs | 59 |
| 761 | General program administration | 108 |
| 762 | Guaranteed farm loans | 129 |
| 763 | [Reserved] | |
| 764 | Direct loan making | 165 |
| 765 | Direct loan servicing—regular | 185 |
| 766 | Direct loan servicing—special | 198 |
| 767 | Inventory property management | 249 |
| 768—769 | [Reserved] | |
| 770 | Indian tribal land aquisition loans | 255 |
| 771 | Boll Weevil Era Dication Loan Program | 259 |
| 772 | Servicing minor program loans | 262 |

| Part | | Page |
|---|---|---|
| 773 | Special Apple Loan Program | 267 |
| 774 | Emergency Loan for Seed Producers Program | 271 |
| 780 | Appeal regulations | 274 |
| 781 | Disclosure of foreign investment in agricultural land | 281 |
| 782 | End-Use Certificate Program | 288 |
| 783 | Tree Assistance Program | 293 |
| 784 | 2004 ewe lamb replacement and retention payment program | 297 |
| 785 | Certified state mediation program | 301 |
| | SUBCHAPTER E—PROVISIONS COMMON TO MORE THAN ONE PROGRAM | |
| 792 | Debt settlement policies and procedures | 308 |
| 795 | Payment limitation | 317 |
| | SUBCHAPTER F—PUBLIC RECORDS | |
| 798 | Availability of information to the public | 324 |
| | SUBCHAPTER G—ENVIRONMENTAL PROTECTION | |
| 799 | Environmental quality and related environmental concerns—compliance with the National Environmental Policy Act | 326 |

# SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAM

## PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART


Sec.
701.1 Administration.
701.2 Definitions.
701.3 Scope.
701.4 Producer eligibility.
701.5 Land eligibility.
701.6–701.9 [Reserved]
701.10 Qualifying minimum cost of restoration.
701.11 Prohibition on duplicate payments.
701.12 Eligible ECP practices.
701.13 Submitting requests.
701.14 Onsite inspections.
701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.
701.16 Practice approval.
701.17 Average adjusted gross income limitation.
701.18–701.20 [Reserved]
701.21 Filing payment application.
701.22 Eligibility to file for cost-share assistance.
701.23 Eligible costs.
701.24 Dividing cost-share among more than one participant.
701.25 Practices carried out with aid from ineligible persons.
701.26 Maximum cost-share percentage.
701.27 Maximum ECP payments per person.
701.28–701.30 [Reserved]
701.31 Maintenance and proper use of practices.
701.32 Failure to comply with program provisions.
701.33 Death, incompetency, or disappearance.
701.34 Appeals.
701.35 Compliance with regulatory measures.
701.36 Schemes and devices and claims avoidances.
701.37 Loss of control of property during the practice life span.
701.38–701.40 [Reserved]
701.41 Cost-share assistance not subject to claims.
701.42 Assignments.
701.43 Information collection requirements.
701.44 Agricultural Conservation Program (ACP) contracts.
701.45 Forestry Incentives Program (FIP) contracts.
701.50 2005 hurricanes.
701.51 Definitions.
701.52 Availability of funding.
701.53 Debris removal and water for livestock.
701.54 Oysters.
701.55 Nursery.
701.56 Poultry.
701.57 Private non-industrial forest land.


AUTHORITY: Pub. L. 95–334, 92 Stat. 420, 16 U.S.C. 2201–2205; Pub. L. 109–148, Division B, sec. 101; and Pub. L. 110–28, secs. 9003–9004.

SOURCE: 69 FR 10302, Mar. 4, 2004, unless otherwise noted.

### § 701.1 Administration.

(a) Subject to the availability of funds, this part provides the terms, conditions and requirements of the Emergency Conservation Program (ECP) administered by the Farm Service Agency (FSA).

(b) ECP is administered by the Administrator, FSA through the Deputy Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees), subject to the availability of funds. Except as otherwise provided in this rule, discretionary determinations to be made under this rule will be made by the Deputy Administrator. Matters committed to the discretion of the Deputy Administrator shall be considered in all cases to be permissive powers and no person shall, under any circumstances, be considered to be entitled to an exercise of such power in their favor.

(c) State and county committees, and representatives and employees, do not have authority to modify or waive any regulations in this part.

(d) The State committee may take any action authorized or required of the county committee by this part, but which the county committee has not taken, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(e) No provision or delegation herein to a State or county committee shall preclude 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.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(g) The Deputy Administrator may limit the authority of state and county committees to approve cost share in excess of specified amounts.

(h) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(i) FSA may consult with any other USDA agency for such assistance as is determined by FSA to be necessary to implement the ECP. FSA is responsible for the technical aspects of ECP but may enter into a Memorandum of Agreement with another party to provide technical assistance. If this limitation results in significant hardship to producers in a county the State committee may request in writing that the Deputy Administrator waive this requirement for that county.

(j) The provisions in this part shall not create an entitlement in any person to any ECP cost share or claim or any particular notice or form or procedure.

(k) Additional terms and conditions may be set forth in the application or the forms participants will be required to sign for participation in the ECP.

### § 701.2 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 apply to this part:

*Agricultural producer* means an owner, operator, or tenant of a farm or ranch used to produce for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl) for commercial production. Producers of animals raised for recreational uses only are not considered agricultural producers.

*Annual agricultural production* means production of crops for food or fiber in a commercial operation that occurs on an annual basis under normal conditions.

*Applicant* means a person who has submitted to FSA a request to participate in the ECP.

*Cost-share payment* means the payment made by FSA to assist a program participant under this part to establish practices required to address qualifying damage suffered in connection with a qualifying disaster.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, the ECP Program Manager, or designee.

*Farmland* means land devoted to agricultural production, including land used for aquaculture, or other land as may be determined by the Deputy Administrator.

*Program year* means the applicable Federal fiscal year.

### § 701.3 Scope.

(a) FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters as determined by the Deputy Administrator, and to carry out emergency water conservation measures during periods of severe drought.

(b) The objective of the ECP is to make cost-share assistance available to eligible participants on eligible land for certain practices, to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this part for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures that the Deputy Administrator determines is necessary to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) Payments under this part are subject to the availability of appropriated funds and any limitations that may otherwise be provided for by Congress.

### §701.4 Producer eligibility.

(a) To be eligible to participate in the ECP the Deputy Administrator must determine that a person is an agricultural producer with an interest in the land affected by the natural disaster, and that person must be liable for or have paid the expense that is the subject of the cost share. The applicant must be a landowner or user in the area where the qualifying event has occurred, and must be a party who will incur the expense that is the subject of the cost share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

(c) All producer eligibility is subject to the availability of funds and an application may be denied for any reason.

### §701.5 Land eligibility.

(a) For land to be eligible, the Deputy Administrator must determine that land that is the subject of the cost share:

(1) Will have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Land expected to have annual agricultural production,

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land is ineligible for cost share if the Deputy Administrator determines that it is, as applicable:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly functioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (c) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be eligible if the Deputy Administrator determines that the

canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees including, but not limited to, timber production.

(c) To determine the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (b)(6) of this section, FSA will consider all relevant factors, including, but not limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations, information may be obtained and used from the Federal Emergency Management Agency or any other Federal, State (including State agencies or political subdivisions), or other entity or individual providing information regarding, for example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data or other relevant information.

## §§ 701.6–701.9 [Reserved]

## § 701.10 Qualifying minimum cost of restoration.

(a) To qualify for assistance under § 701.3(a), the eligible damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.

(b) The Deputy Administrator shall establish the minimum qualifying cost of restoration. Each affected State may be allowed to establish a higher minimum qualifying cost of restoration.

(c) A producer may request a waiver of the qualifying minimum cost of restoration. The waiver request shall document how failure to grant the waiver will result in environmental damage or hardship to the producer and how the waiver will accomplish the goals of the program.

[69 FR 10302, Mar. 4, 2004; 69 FR 22377, Apr. 26, 2004]

## § 701.11 Prohibition on duplicate payments.

(a) *Duplicate payments.* Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP), provided for in 7 CFR part 624, for the same or similar expenses.

(4) Any other program that covers the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost share than is allowed under this part.

(b) *Refund.* Participants who receive any duplicate funds, payments, or benefits shall refund any ECP payments received.

[69 FR 10302, Mar. 4, 2004, as amended at 71 FR 30265, May 26, 2006]

## § 701.12 Eligible ECP practices.

(a) Cost-share assistance may be offered for ECP practices to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under this part shall be allowed to address conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by FSA for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) Cost-share assistance may be provided for permanent vegetative cover, including establishment of the cover where needed, only in conjunction with eligible structures or installations

where cover is needed to prevent erosion and/or siltation or to accomplish some other ECP purpose.

(d) Practice specifications shall represent the minimum levels of performance needed to address the ECP need.

### § 701.13 Submitting requests.

(a) Subject to the availability of funds, the Deputy Administrator shall provide for an enrollment period for submitting ECP cost-share requests.

(b) Requests may be accepted after the announced enrollment period, if such acceptance is approved by the Deputy Administrator and is in accordance with the purposes of the program.

### § 701.14 Onsite inspections.

An onsite inspection must be made before approval of any request for ECP assistance.

### § 701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.

(a) Subject to paragraphs (b) and (c) of this section, costs will not be shared for practices or components of practices that are started before a request for cost share under this part is submitted with the applicable county FSA office.

(b) Costs may be shared for drought and non-drought ECP practices or components of practices that are started before a request is submitted with the county FSA office, only if:

(1) Considered and approved on a case-by-case basis in accordance with instructions of the Deputy Administrator;

(2) The disaster that is the basis of a claim for cost-share assistance created a situation that required the producer to take immediate action to prevent further losses;

(3) The Deputy Administrator determines that the request for assistance was filed within a reasonable amount of time after the start of the enrollment period; and

(4) The practice was started no more than 60 days before the ECP designation was approved for the applicable county office.

(c) Any action taken prior to approval of a claim is taken at the producer's own risk.

(d) An application for relief may be denied for any reason.

(e) All payments under this part are subject to the availability of funds.

### § 701.16 Practice approval.

(a) Requests shall be prioritized before approval based on factors deemed appropriate by FSA, which include, but are not limited to:

(1) Type and degree of damage;

(2) Type of practices needed to address the problem;

(3) Availability of funds;

(4) Availability of technical assistance;

(5) Environmental concerns;

(6) Safety factors; or

(7) Welfare of eligible livestock.

(b) Requests for cost-share assistance may be approved if:

(1) Funds are available; and

(2) The requested practice is determined eligible.

### § 701.17 Average adjusted gross income limitation.

To be eligible for payments issued from the $16 million provided under the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, section 9003), each applicant must meet the provisions of the Adjusted Gross Income Limitations at 7 CFR part 1400 subpart G.

[72 FR 45880, Aug. 16, 2007]

### §§ 701.18–701–20 [Reserved]

### § 701.21 Filing payment application.

Cost-share assistance is conditioned upon the availability of funds and the performance of the practice in compliance with all applicable specifications and program regulations.

(a) *Completion of practice.* After completion of the approved practice, the participant must certify completion and request payment by the payment request deadline. FSA will provide the participant with a form or another manner to be used to request payment.

(b) *Proof of completion.* Participants shall submit to FSA, at the local county office, the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions.

(c) *Payment request deadline.* The time limits for submission of information shall be determined by the Deputy Administrator. The payment request deadline for each ECP practice will be provided in the agreement after the application is approved. Time limits may be extended where failure to submit required information within the applicable time limits is due to reasons beyond the control of the participant.

### § 701.22 Eligibility to file for cost-share assistance.

Any eligible participant, as defined in this part, who paid part of the cost of an approved practice may file an application for cost-share payment.

### § 701.23 Eligible costs.

(a) Cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, up to the maximums provided in §§ 701.26 and 701.27.

(b) Eligible costs shall be limited as follows:

(1) Costs for use of personal equipment shall be limited to those incurred beyond the normal operation of the farm or ranch.

(2) Costs for personal labor shall be limited to personal labor not normally required in the operation of the farm or ranch.

(3) Costs for the use of personal equipment and labor must be less than that charged for such equipment and labor by commercial contractors regularly employed in such areas.

(4) Costs shall not exceed those needed to achieve the minimum performance necessary to resolve the problem being corrected by the practice. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Costs shall not exceed the practice specifications in § 701.12(d) for cost-share calculations.

(d) The gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party including, but not limited to, an insurance indemnity payment.

(e) Total cost-share payments from all sources shall not exceed the total of eligible costs of the practice to the applicant.

### § 701.24 Dividing cost-share among more than one participant.

(a) For qualifying cost-share assistance under this part, the cost shall be credited to the participant who personally performed the practice or who paid to have it performed by a third party. If a payment or credit was made by one participant to another potential participant, paragraph (c) of this section shall apply.

(b) If more than one participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice. FSA may determine what proportion was contributed by each participant by considering the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) Allowance by a participant of a credit to another participant through adjustment in rent, cash or other consideration, may be considered as a cost of a practice to the paying party only if FSA determines that such credit is directly related to the practice. An applicant who was fully reimbursed shall be considered as not having contributed to the practice performance.

### § 701.25 Practices carried out with aid from ineligible persons.

Any assistance provided by someone other than the eligible participant, including assistance from a State or Federal agency, shall be deducted from the participant's total costs incurred for the practice for the purpose of computing ECP cost shares. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions upon a request from the State committee and demonstration of the need for such a waiver.

### § 701.26 Maximum cost-share percentage.

(a) In addition to other restrictions that may be applied by FSA, an ECP participant shall not receive more than 75 percent of the lesser of the participant's total actual cost or of the total allowable costs, as determined by this part, to perform the practice.

(b) However, notwithstanding paragraph (a) of this section, a qualified limited resource producer that participates in the ECP may receive no more than 90 percent of the participant's actual cost to perform the practice or 90 percent of the total allowable costs for the practice as determined under this part.

(c) In addition to other limitations that apply, in no case shall the ECP payment exceed 50 percent of what the Deputy Administrator has determined is the agricultural value of the affected land.

### § 701.27 Maximum ECP payments per person.

A person, as defined in part 1400 of this title, is limited to a maximum cost-share of $200,000 per person, per disaster.

### §§ 701.28–701.30 [Reserved]

### § 701.31 Maintenance and proper use of practices.

(a) Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Some practices have an established life span or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice.

(b) If a practice is not properly maintained for the established life span, the participant may be required to refund all or part of cost-share assistance received. The Deputy Administrator will determine what constitutes failure to maintain a practice and the amount that must be refunded.

### § 701.32 Failure to comply with program provisions.

Costs may be shared for performance actually rendered even though the minimum requirements otherwise established for a practice have not been satisfied if a reasonable effort was made to satisfy the minimum requirements and if the practice, as performed, will adequately address the need for the practice.

### § 701.33 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any participant, any cost-share payment due shall be paid to the successor, as determined in accordance with part 707 of this chapter.

### § 701.34 Appeals.

Part 11 of this title and part 780 of this chapter apply to determinations made under this part.

### § 701.35 Compliance with regulatory measures.

Participants who perform practices shall be responsible for obtaining the authorities, permits, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The ECP participant shall be wholly responsible for any actions taken with respect to the project and shall, in addition, be responsible for returning and refunding any ECP cost shares made, where the purpose of the project cannot be accomplished because of the applicants' lack of clearances or other problems.

### § 701.36 Schemes and devices and claims avoidances.

(a) If FSA determines that a participant has taken any action designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid that participant or related person for that particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice and providing false or misleading information related to practices, costs, or arrangements between

entities or individuals that would have an effect on ''person'' determinations made under this part.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the ECP or to evade any other requirement or provision of the program or this part.

(c) If FSA determines that a participant has employed any scheme or device to deprive any other person of cost-share assistance, or engaged in any actions to receive payments under this part that also were designed to avoid claims of the United States or its instrumentalities or agents against that party, related parties, or third parties, the participant shall refund all or part of any of those program payments paid to that participant for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP assistance and the facts and circumstances surrounding such claim.

(e) A participant who has knowingly supplied false information or filed a false claim shall be ineligible for cost-share assistance related to the disaster for which the false information was filed, or for any period of time FSA deems appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices that do not meet required specifications.

### § 701.37 Loss of control of the property during the practice life span.

In the event of voluntary or involuntary loss of control of the land by the ECP cost-share recipient during the practice life-span, if the person acquiring control elects not to become a successor to the ECP agreement and the practice is not maintained, each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP cost-share assistance related to that practice. The practice life span, for purposes of this section, includes any maintenance period that is essential to its success.

### §§ 701.38–701.40 [Reserved]

### § 701.41 Cost-share assistance not subject to claims.

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at parts 792 and 1403 of this title shall be applicable to this program and the provisions most favorable to a collection of the debt shall control.

### § 701.42 Assignments.

Participants may assign ECP cost-share assistance payments, in whole or in part, according to part 1404 of this title.

### § 701.43 Information collection requirements.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0082.

### § 701.44 Agricultural Conservation Program (ACP) contracts.

Contracts for ACP that are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

### § 701.45 Forestry Incentives Program (FIP) contracts.

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 2002, shall continue to apply to FIP contracts in effect as of that date, except as provided in accord with a delegation of the administration of that program and such delegation and actions taken thereunder shall apply to any other FIP matters as may be at issue or in dispute.

### § 701.50 2005 hurricanes.

In addition benefits elsewhere allowed by this part, claims related to calendar year 2005 hurricane losses may be allowed to the extent provided for in §§ 701.50 through 701.57. Such claims under those sections will be limited to losses in counties that were declared disaster counties by the President or the Secretary because of 2005 hurricanes and to losses to oyster reefs. Claims under §§ 701.51 through 701.57 shall be subject to all normal ECP limitations and provisions except as explicitly provided in those sections.

[71 FR 30265, May 26, 2006]

### § 701.51 Definitions.

The following definitions apply to §§ 701.52 through 701.57:

*Above-ground irrigation* facilities means irrigation pipes, sprinklers, pumps, emitters, and any other integral part of the above ground irrigation system.

*Barn* means a structure used for the housing of animals or farm equipment.

*Commercial forest land* means forest land with trees intended to be harvested for commercial purposes that has a productivity potential greater than or equal to 20 cubic feet per year of merchantable timber.

*Date of loss* means the date the hurricane damage occurred in calendar year 2005.

*Eligible county* means any county that was declared a disaster county by the President or the Secretary because of a calendar year 2005 hurricane, that otherwise meets the eligibility requirements of this part.

*Forest management plan* means a plan of action and direction on forest lands to achieve a set of results usually specified as goals or objectives consistent with program policies prepared or approved by a natural resource professional, such as a State forestry agency representative.

*Poultry house* means a building used to house live poultry for the purpose of commercial food production.

*Private non-industrial forest land* means rural commercial forest lands with existing tree cover, or which are suitable for growing trees, that are owned by a private non-industrial forest landowner as defined in this section.

*Private non-industrial forest landowner* means, for purposes of the ECP for forestry, an individual, group, association, corporation, Indian tribe, or other legal private entity owning non-industrial private forest land or who receives concurrence from the landowner for making the claim in lieu of the owner, and for practice implementation and who holds a lease on the land for a minimum of 10 years. Owners or lessees principally engaged in the primary processing of raw wood products are excluded from this definition. Owners of land leased to lessees who would be excluded under the previous sentence are also excluded.

*Shade house* means a metal or wood structure covered by a material used for shade purposes.

[71 FR 30265, May 26, 2006]

### § 701.52 Availability of funding.

Payments under §§ 701.53 through 701.57 are subject to the availability of funds under Public Law 109–149.

[71 FR 30265, May 26, 2006]

### § 701.53 Debris removal and water for livestock.

Subject to the other eligibility provisions of this part, an ECP participant addressing damage in an eligible county from hurricanes during calendar year 2005 may be allowed up to 90 percent of the participant's actual cost or of the total allowable cost for cleaning up structures such as barns, shade

houses and above-ground irrigation facilities, for removing poultry house debris, including carcasses, and for providing water for livestock.

[71 FR 30265, May 26, 2006]

### § 701.54 Oysters.

(a) Notwithstanding § 701.5(b), but otherwise subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be made available under this section for the eligible cost of refurbishing public or private oyster reefs damaged in calendar year 2005 by a 2005 hurricane. Oyster bed refurbishing consists of removing mud from public and private oyster beds, staking out the leased areas, reestablishing the oyster beds using crushed limestone, recycled oyster shells, or other available and suitable approved cultch materials, reseeding the oyster beds, and related actions approved by FSA.

(b) Notwithstanding § 701.26, an ECP participant shall not receive more than 90 percent of the participant's actual cost or of the total allowable cost described in paragraph (a) of this section.

(c) The provisions of § 701.26(c) limiting ECP payments to 50 percent of the agricultural value of the land do not apply to oyster bed rehabilitation and refurbishing.

[71 FR 30265, May 26, 2006]

### § 701.55 Nursery.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be made available in an eligible county under this section for the cost of removing nursery debris such as nursery structures, shade houses, and above ground irrigation facilities, where such debris was created in calendar year 2005 by a 2005 hurricane.

(b) Notwithstanding § 701.26, an otherwise eligible ECP participant may be allowed up to 90 percent of the participant's actual cost or of the total allowable cost for losses described in paragraph (a) of this section.

[71 FR 30265, May 26, 2006]

### § 701.56 Poultry.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be allowed under this section for uninsured losses in calendar year 2005 to a poultry house in an eligible county due to a 2005 hurricane.

(b) Claimants under this section may be allowed an amount up to the lesser of:

(1) The lesser of 50 percent of the participant's actual or the total allowable cost of the reconstruction or repair of a poultry house, or

(2) $50,000 per poultry house.

(c) The total amount of assistance provided under this section and any indemnities for losses to a poultry house paid to a poultry grower, may not exceed 90 percent of the total costs associated with the reconstruction or repair of a poultry house.

(d) Poultry growers must provide information on insurance payments on their poultry houses. Copies of contracts between growers and poultry integrators may be required.

(e) Assistance under this section is limited to amounts necessary for reconstruction and/or repair of a poultry house to the same size as before the hurricane.

(f) Assistance is limited to poultry houses used to house poultry for commercial enterprises. A commercial poultry enterprise is one with a dedicated structure for poultry and a number of poultry that exceeds actual noncommercial uses of poultry and their products at all times, and from which poultry or related products are actually, and routinely, sold in commercial quantities for food, fiber, or eggs. Unless otherwise approved by FSA, a commercial quantity is a quantity per week that would normally exceed $100 in sales.

(g) Poultry houses with respect to which claims are made under this section must be reconstructed or repaired to meet current building standards.

[71 FR 30265, May 26, 2006]

### § 701.57 Private non-industrial forest land.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance made available under this section with respect to private, non-industrial forest land in an eligible county for

costs related to reforestations, rehabilitation, and related measures undertaken because of losses in calendar year 2005 caused by a 2005 hurricane. To be eligible, a non-industrial private forest landowner must have suffered a loss of, or damage to, at least 35 percent of forest acres on commercial forest land of the forest landowner in a designated disaster county due to a 2005 hurricane or related condition. The 35 percent loss shall be determined based on the value of the land before and after the hurricane event.

(b) During the 5-year period beginning on the date of the loss, the eligible private non-industrial forest landowner must:

(1) Reforest the eligible damaged forest acres in accordance with a forest management plan approved by FSA that is appropriate for the forest type where the forest management plan is developed by a person with appropriate forestry credentials, as determined by the Deputy Administrator;

(2) Use the best management practices included in the forest management plan; and

(3) Exercise good stewardship on the forest land of the landowner while maintaining the land in a forested state.

(c) Notwithstanding § 701.26, an ECP participant shall not receive under this section more than 75 percent of the participant's actual cost or of the total allowable cost of reforestation, rehabilitation, and related measures.

(d) Payments under this section shall not exceed a maximum of $150 per acre for any acre.

(e) Requests will be prioritized based upon planting tree species best suited to the site as stated in the forest management plan.

[71 FR 30265, May 26, 2006]

# PART 707—PAYMENTS DUE PERSONS WHO HAVE DIED, DISAPPEARED, OR HAVE BEEN DECLARED INCOMPETENT

Sec.

707.1 Applicability.
707.2 Definitions.
707.3 Death.
707.4 Disappearance.
707.5 Incompetency.
707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.
707.7 Form of application.

AUTHORITY: 54 Stat. 728, as amended, sec. 121, 70 Stat. 197, sec. 375, 52 Stat. 66, as amended, sec. 124(i), 75 Stat. 300, sec. 307(h), 76 Stat. 617, sec. 318, 76 Stat. 622, sec. 324(2), 76 Stat. 630, sec. 704, 68 Stat. 911, secs. 4, 8(b), 49 Stat. 164, 1149, as amended, sec. 101(4), 76 Stat. 606, sec. 3, 77 Stat. 45, sec. 4, 62 Stat. 1070; 5 U.S.C. 301, 7 U.S.C. 1334 note, 1339, 1375, 1379j, 1385, 1783, 1809; 16 U.S.C. 590d, 590h(b), 590(e), 590p(h), 15 U.S.C. 714b(d)(j)(k).

SOURCE: 30 FR 6246, May 5, 1965, unless otherwise noted.

## § 707.1 Applicability.

This part applies to all programs in title 7 of the Code of Federal Regulations which are administered by the Farm Service Agency under which payments are made to eligible program participants. This part also applies to all other programs to which this part is applicable by the individual program regulations.

## § 707.2 Definitions.

''Person'' when relating to one who dies, disappears, or becomes incompetent, prior to receiving payment, means a person who has earned a payment in whole or in part pursuant to any of the programs to which this part is applicable. ''Children'' shall include legally adopted children who shall be entitled to share in any payment in the same manner and to the same extent as legitimate children of natural parents. ''Brother'' or ''sister'', when relating to one who, pursuant to the regulations in this part, is eligible to apply for the payment which is due a person who dies, disappears, or becomes incompetent prior to the receipt of such payment, shall include brothers and sisters of the half blood who shall be considered the same as brothers and sisters of the whole blood. ''Payment'' means a payment by draft, check or certificate pursuant to any of the Programs to which this part is applicable. Payments shall not be considered received for the purposes of this part until such draft, check or certificate has been negotiated or used.

**§ 707.3 Death.**

(a) Where any person who is otherwise eligible to receive a payment dies before the payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, in accordance with the following order of precedence:

(1) To the administrator or executor of the deceased person's estate.

(2) To the surviving spouse, if there is no administrator or executor and none is expected to be appointed, or if an administrator or executor was appointed but the administration of the estate is closed (i) prior to application by the administrator or executor for such payment or (ii) prior to the time when a check, draft, or certificate issued for such payment to the administrator or executor is negotiated or used.

(3) If there is no surviving spouse, to the sons and daughters in equal shares. Children of a deceased son or daughter of a deceased person shall be entitled to their parent's share of the payment, share and share alike. If there are no surviving direct descendants of a deceased son or daughter of such deceased person, the share of the payment which otherwise would have been made to such son or daughter shall be divided equally among the surviving sons and daughters of such deceased person and the estates of any deceased sons or daughters where there are surviving direct descendants.

(4) If there is no surviving spouse and no direct descendant, payment shall be made to the father and mother of the deceased person in equal shares, or the whole thereof to the surviving father or mother.

(5) If there is no surviving spouse, no direct descendant, and no surviving parent, payment shall be made to the brothers and sisters of the deceased person in equal shares. Children of a deceased brother or sister shall be entitled to their parent's share of the payment, share and share alike. If there are no surviving direct descendants of the deceased brother or sister of such deceased person, the share of the payment which otherwise would have been made to such brother or sister shall be divided equally among the surviving brothers and sisters of such deceased person and the estates of any deceased brothers or sisters where there are surviving direct descendants.

(6) If there is no surviving spouse, direct descendant, parent, or brothers or sisters or their descendants, the payment shall be made to the heirs-at-law in accordance with the law of the State of domicile of the deceased person.

(b) If any person who is entitled to payment under the above order of precedence is a minor, payment of his share shall be made to his legal guardian, but if no legal guardian has been appointed payment shall be made to his natural guardian or custodian for his benefit, unless the minor's share of the payment exceeds $1,000, in which event payment shall be made only to his legal guardian.

(c) Any payment which the deceased person could have received may be made jointly to the persons found to be entitled to such payment or shares thereof under this section or, pursuant to instructions issued by the Farm Service Agency, a separate payment may be issued to each person entitled to share in such payment.

**§ 707.4 Disappearance.**

(a) In case any person otherwise eligible to receive payment disappears before receiving the payment, such payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to one of the following in the order mentioned:

(1) The conservator or liquidator of his estate, if one be duly appointed.

(2) The spouse.

(3) An adult son or daughter or grandchild for the benefit of his estate.

(4) The mother or father for the benefit of his estate.

(5) An adult brother or sister for the benefit of his estate.

(6) Such person as may be authorized under State law to receive payment for the benefit of his estate.

(b) A person shall be deemed to have disappeared if (1) he has been missing for a period of more than 3 months, (2) a diligent search has failed to reveal his whereabouts, and (3) such person has not communicated during such period with other persons who would be

expected to have heard from him. Evidence of such disappearance must be presented to the county committee in the form of a statement executed by the person making the application for payment, setting forth the above facts, and must be substantiated by a statement from a disinterested person who was well acquainted with the person who has disappeared.

### § 707.5 Incompetency.

(a) Where any person who is otherwise eligible to receive a payment is adjudged incompetent by a court of competent jurisdiction before the payment is received, payment may be made, upon proper application therefor, without regard to claims of creditors other than the United States, to the guardian or committee legally appointed for such incompetent person. In case no guardian or committee has been appointed, payment, if not more than $1,000, may be made without regard to claims of creditors other than the United States, to one of the following in the order mentioned for the benefit of the incompetent person:

(1) The spouse.

(2) An adult son, daughter, or grandchild.

(3) The mother or father.

(4) An adult brother or sister.

(5) Such person as may be authorized under State law to receive payment for him (see standard procedure prescribed for the respective region).

(b) In case payment is more than $1,000, payment may be made only to such person as may be authorized under State law to receive payment for the incompetent.

### § 707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.

In case any person entitled to apply for a payment pursuant to the provisions of § 707.3, § 707.4, § 707.5, or this section, dies, disappears, or is adjudged incompetent, as the case may be, after he has applied for such payment but before the payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to the person next entitled thereto in accordance with the order of precedence set forth in § 707.3, § 707.4, or § 707.5, as the case may be.

### § 707.7 Form of application.

Persons desiring to claim payment in accordance with this part 707 may do so on Form FSA–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent''. If the person who died, disappeared, or was declared incompetent did not apply for payment by filing the applicable program application for payment form, such program application for payment must also be filed in accordance with applicable regulations. If the payment is made under the Naval Stores Conservation Program, Part II of the Form FSA–325 shall be executed by the local District Supervisor of the U.S. Forest Service. In connection with applications for payment under all other programs itemized in § 707.1, Form FSA–325, and program applications for payments where required, shall be filed with the FSA county office where the person who earned the payment would have been required to file his application.

## PART 708—RECORD RETENTION REQUIREMENTS—ALL PROGRAMS

AUTHORITY: Sec. 4, 49 Stat. 164, secs. 7–17, 49 Stat. 1148, as amended; 16 U.S.C. 590d, 590g–590q.

### § 708.1 Record retention period.

For the purposes of the programs in this chapter, no receipt, invoice, or other record required to be retained by any agricultural producer as evidence tending to show performance of a practice under any such program needs to be retained by such producer more than two years following the close of the program year of the program.

[25 FR 105, Jan. 7, 1960. Redesignated at 26 FR 5788, June 29, 1961]

# SUBCHAPTER B—FARM MARKETING QUOTAS, ACREAGE ALLOTMENTS, AND PRODUCTION ADJUSTMENT

## PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED


Sec.
714.35 Basis, purpose, and applicability.
714.36 Definitions.
714.37 Instructions and forms.
714.38 Who may claim refund.
714.39 Manner of filing.
714.40 Time of filing.
714.41 Statement of claim.
714.42 Designation of trustee.
714.43 Recommendation by county committee.
714.44 Recommendation by State committee.
714.45 Approval by Deputy Administrator.
714.46 Certification for payment.


AUTHORITY: Secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

SOURCE: 35 FR 12098, July 29, 1970, unless otherwise noted.

### § 714.35 Basis, purpose, and applicability.

(a) *Basis and purpose.* The regulations set forth in this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of prescribing the provisions governing refunds of marketing quota penalties erroneously, illegally, or wrongfully collected with respect to all commodities subject to marketing quotas under the Act.

(b) *Applicability.* This part shall apply to claims submitted for refunds of marketing quota penalties erroneously, illegally, or wrongfully collected on all commodities subject to marketing quotas under the Act. It shall not apply to the refund of penalties which are deposited in a special deposit account pursuant to sections 314(b), 346(b), 356(b), or 359 of the Agricultural Adjustment Act of 1938, as amended, or paragraph (3) of Pub. L. 74, 77th Congress, available for the refund of penalties initially collected which are subsequently adjusted downward by action of the county committee, review committee, or appropriate court, until such penalties have been deposited in the general fund of the Treasury of the United States after determination that no downward adjustment in the amount of penalty is warranted. All prior regulations dealing with refunds of penalties which were contained in this part are superseded upon the effective date of the regulations in this part.

### § 714.36 Definitions.

(a) *General terms.* 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 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 future as well as the present. The definitions in part 719 of this chapter shall apply to this part. The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Other terms applicable to this part.* The following terms shall have the following meanings:

(1) ''Act'' means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(2) ''Claim'' means a written request for refund of penalty.

(3) ''Claimant'' means a person who makes a claim for refund of penalty as provided in this part.

(4) ''County Office'' means the office of the Agricultural Stabilization and Conservation County Committee.

(5) ''Penalty'' means an amount of money collected, including setoff, from or on account of any person with respect to any commodity to which this part is applicable, which has been covered into the general fund of the Treasury of the United States, as provided in section 372(b) of the Act.

(6) ''State office'' means the office of the Agricultural Stabilization and Conservation State Committee.

### § 714.37 Instructions and forms.

The Deputy Administrator shall cause to be prepared and issued such

instructions and forms as are necessary for carrying out the regulations in the part.

### § 714.38 Who may claim refund.

Claim for refund may be made by:

(a) Any person who was entitled to share in the price or consideration received by the producer with respect to the marketing of a commodity from which a deduction was made for the penalty and bore the burden of such deduction in whole or in part.

(b) Any person who was entitled to share in the commodity or the proceeds thereof, paid the penalty thereon in whole or in part and has not been reimbursed therefor.

(c) Any person who was entitled to share in the commodity or the proceeds thereof and bore the burden of the penalty because he has reimbursed the person who paid such penalty.

(d) Any person who, as buyer, paid the penalty in whole or in part in connection with the purchase of a commodity, was not required to collect or pay such penalty, did not deduct the amount of such penalty from the price paid the producer, and has not been reimbursed therefor.

(e) Any person who paid the penalty in whole or in part as a surety on a bond given to secure the payment of penalties and has not been reimbursed therefor.

(f) Any person who paid the whole or any part of the sum paid as a penalty with respect to a commodity included in a transaction which in fact was not a marketing of such commodity and has not been reimbursed therefor.

### § 714.39 Manner of filing.

Claim for refund shall be filed in the county office on a form prescribed by the Deputy Administrator. If more than one person is entitled to file a claim, a joint claim may be filed by all such persons. If a separate claim is filed by a person who is a party to a joint claim, such separate claim shall not be approved until the interest of each person involved in the joint claim has been determined.

### § 714.40 Time of filing.

Claim shall be filed within 2 years after the date payment was made to the Secretary. The date payment was made shall be deemed to be the date such payment was deposited in the general fund of the Treasury as shown on the certificate of deposit on which such payment was scheduled.

### § 714.41 Statement of claim.

The claim shall show fully the facts constituting the basis of the claim; the name and address of and the amount claimed by every person who bore or bears any part or all of the burden of such penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. It shall be the responsibility of the county committee to determine that any person who executes a claim as agent or fiduciary is properly authorized to act in such capacity. There should be attached to the claim all pertinent documents with respect to the claim or duly authenticated copies thereof.

### § 714.42 Designation of trustee.

Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim, they shall be permitted to appoint a trustee. The person designated as trustee shall execute the declaration of trust.

### § 714.43 Recommendation by county committee.

Immediately upon receipt of a claim, the date of receipt shall be recorded on the face thereof. The county committee shall determine, on the basis of all available information, if the data and representations on the claim are correct. The county committee shall recommend approval or disapproval of the claim, and attach a statement to the claim, signed by a member of the committee, giving the reasons for their action. After the recommendation of approval or disapproval is made by the county committee, the claim shall be promptly sent to the State committee.

### § 714.44 Recommendation by State committee.

A representative of the State committee shall review each claim referred by the county committee. If a claim is

sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or disapproval, the claim shall be promptly sent to the Deputy Administrator.

### § 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

### § 714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

## PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

### Subpart A—General Provisions

Sec.
718.1 Applicability.
718.2 Definitions.
718.3 State committee responsibilities.
718.4 Authority for farm entry and providing information.
718.5 Rule of fractions.
718.6 Controlled substance.
718.7 Furnishing maps.
718.8 Administrative county.
718.9 Signature requirements.
718.10 Time limitations.
718.11 Disqualification due to federal crop insurance fraud.

### Subpart B—Determination of Acreage and Compliance

718.101 Measurements.
718.102 Acreage reports.
718.103 Prevented planted and failed acreage.
718.104 Late-filed and revised acreage reports.
718.105 Tolerances, variances, and adjustments.
718.106 Non-compliance and fraudulent acreage reports.
718.107 Acreages.
718.108 Measuring acreage including skip row acreage
718.109 Deductions.
718.110 Adjustments.
718.111 Notice of measured acreage.
718.112 Redetermination.

### Subpart C—Reconstitution of Farms, Allotments, Quotas, and Bases

718.201 Farm constitution.
718.202 Determining the land constituting a farm.
718.203 County committee action to reconstitute a farm.
718.204 Reconstitution of allotments, quotas, and bases.
718.205 Substantive change in farming operation, and changes in related legal entities.
718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.
718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

### Subpart D—Equitable Relief From Ineligibility

718.301 Applicability.
718.302 Definitions and abbreviations.
718.303 Reliance on incorrect actions or information.
718.304 Failure to fully comply.
718.305 Forms of relief.
718.306 Finality.
718.307 Special relief approval authority for State Executive Directors.

AUTHORITY: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

SOURCE: 61 FR 37552, July 18, 1996, unless otherwise noted.

## Subpart A—General Provisions

SOURCE: 68 FR 16172, Apr. 3, 2003, unless otherwise noted.

### §718.1 Applicability.

(a) This part:

(1) Is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA), except that only §§718.6 and 718.11 are applicable to parts 761 through 774 of this chapter;

(2) Governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) For all programs, except for those administered under parts 761 through 774 of this chapter:

(1) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and carried out in the field by State and county FSA committees (State and county committees);

(2) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part;

(3) No provisions or delegation herein to a State or county committee will preclude 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;

(4) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) The programs under parts 761 through 774 will be administered according to the part, or parts, applicable to the specific program.

[72 FR 63284, Nov. 8, 2007]

### §718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

*Administrative variance* (AV) means the amount by which the determined acreage of tobacco may exceed the effective allotment and be considered in compliance with program regulations.

*Allotment* means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

*Allotment crop* means any tobacco crop for which acreage allotments are established pursuant to part 723 of this chapter.

*Barley* means barley that follows the standard planting and harvesting practice of barley for the area in which the barley is grown.

*Base acres* means the quantity of acres established according to part 1413 of this title.

*CCC* means the Commodity Credit Corporation.

*Combination* means consolidation of two or more farms or parts of farms, having the same operator, into one farm.

*Common ownership unit* means a distinguishable parcel of land consisting of one or more tracts of land with the same owners, as determined by FSA.

*Constitution* means the make-up of the farm before any change is made because of change in ownership or operation.

*Controlled substances* means the term set forth in 21 CFR part 1308.

*Corn* means field corn or sterile high-sugar corn that follows the standard planting and harvesting practices for corn for the area in which the corn is grown. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

*County* means the county or parish of a state. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

*County committee* means the FSA county committee.

*Crop reporting date* means the latest date the Administrator, FSA will allow the farm operator, owner, or their

agent to submit a crop acreage report in order for the report to be considered timely.

*Cropland.* (a) Means land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;

(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;

(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;

(5) Is in sod waterways or filter strips planted to a perennial cover;

(6) Is preserved as cropland in accordance with part 1410 of this title; or

(7) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(1) No longer used for agricultural production;

(2) No longer suitable for production of crops;

(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or

(5) Converted to ponds, tanks or trees other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

*Current year* means the year for which allotments, quotas, acreages, and bases, or other program determinations are established for that program. For controlled substance violations, the current year is the year of the actual conviction.

*Deputy Administrator* means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or their designee.

*Determination* means a decision issued by a State, county or area FSA committee or its employees that affects a participant's status in a program administered by FSA.

*Determined acreage* means that acreage established by a representative of the Farm Service Agency by use of official acreage, digitizing or planimetering areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

*Direct and counter-cyclical program (DCP) cropland* means land that currently meets the definition of cropland, land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1413 of this title and continues to be used for agricultural purposes, or land that met the definition of cropland on or after April, 4, 1996, and continues to be used for agricultural purposes and not for non-agricultural commercial or industrial use.

*Division* means the division of a farm into two or more farms or parts of farms.

*Entity* means a corporation, joint stock company, association limited partnership, irrevocable 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.

*Extra Long Staple (ELS) Cotton* means cotton that follows the standard planting and harvesting practices of the area in which the cotton is grown, and meets all of the following conditions:

(1) American-Pima, Sea Island, Sealand, all other varieties of the Barbandense species of cotton and any hybrid thereof, and any other variety of cotton in which 1 or more of these varieties is predominant; and,

(2) The acreage is grown in a county designated as an ELS county by the Secretary; and,

(3) The production from the acreage is ginned on a roller-type gin.

*Family member* means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

*Farm* means a tract, or tracts, of land that are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

*Farm inspection* means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

*Farm number* means a number assigned to a farm by the county committee for the purpose of identification.

*Farmland* means the sum of the DCP cropland, forest, acreage planted to an eligible crop acreage as specified in 1437.3 of this title and other land on the farm.

*Field* means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

*GIS* means Geographic Information System or a system that stores, analyzes, and manipulates spatial or geographically referenced data. GIS computes distances and acres using stored data and calculations.

*GPS* means Global Positioning System or a positioning system using satellites that continuously transmit coded information. The information transmitted from the satellites is interpreted by GPS receivers to precisely identify locations on earth by measuring distance from the satellites.

*Grain sorghum* means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, having characteristics of a feed grain or dual purpose variety) that follows the standard planting and harvesting practice for grain sorghum for the area in which the grain sorghum was planted. Sweet sorghum is not considered a grain sorghum.

*Ground measurement* means the distance between 2 points on the ground, obtained by actual use of a chain tape, GPS with a minimum accuracy level as determined by the Deputy Administrator, or other measuring device.

*Joint operation* means a general partnership, joint venture, or other similar business organization.

*Landlord* means one who rents or leases farmland to another.

*Measurement service* means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

*Measurement service after planting* means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

*Measurement service guarantee* means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and

the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

*Minor child* means an individual who is under 18 years of age. State court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

*Nonagricultural commercial or industrial use* means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

*Normal planting period* means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

*Normal row width* means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

*Oats* means oats that follows the standard planting and harvesting practice of oats for the area in which the oats are grown.

*Operator* means an individual, entity, or joint operation who is determined by the FSA county committee to be in control of the farming operations on the farm.

*Owner* means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government, however, such agency shall not be eligible to receive any payment pursuant to such contract;

(2) One who is buying farmland under a contract for deed;

(3) One who has a life-estate in the property; or

(4) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title:

(i) One who has purchased a farm in a foreclosure proceeding; and

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (d)(1)(i) of this definition shall be entitled to receive benefits in accordance with an agency program only to the extent the owner complies with all program requirements.

(5) One who is an heir to property but cannot provide legal documentation to confirm ownership of the property, if such heir certifies to the ownership of the property and the certification is considered acceptable, as determined by the Deputy Administrator. Upon a false or inaccurate certification the Deputy Administrator may impose liability on the certifying party for additional cost that results—however such a certification may be taken by the Deputy Administrator as a bar to other claims where there has been a failure of other persons claiming an interest in the property to act promptly to protect or declare their interest or where the current public records do not accurately set out the current ownership of the farm.

*Partial reconstitution* means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops. This results in the same farm having two or more farm numbers in one crop year.

*Participant* means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

*Pasture* means land that is used to, or has the potential to, produce food for grazing animals.

*Person* means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity 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 a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved;

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a

fund or account separate from that of any other individual or entity.

*Producer* means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

*Quota* means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

*Random inspection* means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

*Reconstitution* means a change in the land constituting a farm as a result of combination or division.

*Reported acreage* means the acreage reported by the farm operator, farm owner, farm producer, or their agent on a Form prescribed by the FSA.

*Required inspection* means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine adherence to program requirements or to verify the farm operator's, farm owner's, farm producer, or agent's report.

*Rice* means rice that follows the standard planting and harvesting practices of the area excluding sweet, glutinous, or candy rice such as Mochi Gomi.

*Secretary* means the Secretary of Agriculture of the United States, or a designee.

*Sharecropper* means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

*Skip-row or strip-crop planting* means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

*Staking and referencing* means determining an acreage before planting by:

(1) Measuring or computing a delineated area from ground measurements and documenting the area measured; and, (2) Staking and referencing the area on the ground.

*Standard deduction* means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

*State* means each 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, or the Trust Territory of the Pacific Islands.

*Subdivision* means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

*Tenant* means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

*Tolerance* means a prescribed amount within which the reported acreage and/or production may differ from the determined acreage and/or production and still be considered as correctly reported.

*Tract* means a unit of contiguous land under one ownership, which is operated as a farm, or part of a farm.

*Tract combination* means the combining of two or more tracts if the tracts have common ownership and are contiguous.

*Tract division* means the dividing of a tract into two or more tracts because of a change in ownership or operation.

*Turn-area* means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turn row, headland, or end row).

*Upland cotton* means planted and stub cotton that is not considered extra long staple cotton, and that follows the standard planting and harvesting practices of the area and 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.

*Wheat* means wheat for feed or dual purpose variety that follows the standard planting and harvesting practice of wheat for the area in which the wheat is grown.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004]

### § 718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee, which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee, which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides or digital images.

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in § 718.108, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.111.

### § 718.4 Authority for farm entry and providing information.

(a) This section applies to all farms that have a tobacco allotment or quota under part 723 of this chapter and all farms that are currently participating in programs administered by FSA.

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

(1) All FSA and CCC program benefits for that farm shall be denied;

(2) The person preventing the farm inspection shall pay all costs associated with the farm inspection;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) For tobacco, the farm operator must furnish proof of disposition of:

(i) All tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) No credit will be given for disposing of excess tobacco other than that identified by a marketing card unless disposed of in the presence of FSA in accordance with § 718.109 of this part.

(c) If a program participant refuses to furnish reports or data necessary to determine benefits in accordance with paragraph (a) of this section, or FSA determines that the report or data was erroneously provided through the lack of good faith, all program benefits relating to the report or data requested will be denied.

### § 718.5 Rule of fractions.

(a) Fractions shall be rounded after completion of the entire associated computation. All mathematical calculations shall be carried to two decimal places beyond the number of decimal places required by the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by ''1'' as follows:

| Required decimal | Computation | Result |
|---|---|---|
| Whole numbers | 6.49 (or less) | 6 |
| | 6.50 (or more) | 7 |
| Tenths | 7.649 (or less) | 7.6 |
| | 7.650 (or more) | 7.7 |
| Hundredths | 8.8449 (or less) | 8.84 |
| | 8.8450 (or more) | 8.85 |
| Thousandths | 9.63449 (or less) | 9.634 |
| | 9.63450 (or more) | 9.635 |

| Required decimal | Computation | Result |
|---|---|---|
| 0 thousandths ..... | 10.993149 (or less) ... | 10.9931 |
| | 10.993150 (or more) | 10.9932 |

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

### § 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year is ineligible during the crop year of conviction and the four succeeding crop years, for any of the following USDA benefits:

(i) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1412 of this title;

(ii) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(iii) Any price support loan available in accordance with part 1421 of this title;

(iv) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(v) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(vi) Crop Insurance under the Federal Crop Insurance Act;

(vii) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law administered by FSA's Farm Loan Programs.

(2) Possession or trafficking of a controlled substance, is ineligible for any or all USDA benefits:

(i) At the discretion of the court,

(ii) To the extent and for a period of time the court determines.

(c) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible will be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

[72 FR 63284, Nov. 8, 2007]

### § 718.7 Furnishing maps.

A reasonable number, as determined by FSA, of reproductions of photographs, mosaics and maps shall be available to the owner of a farm insurance companies reinsured by the Federal Crop Insurance Corporation (FCIC), private party contractors performing their official duties on behalf of FSA, CCC, and other USDA agencies. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

### § 718.8 Administrative county.

(a) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(b) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) The State committee shall submit all requests to deviate from regulations specified in this section to the Deputy Administrator.

### § 718.9 Signature requirements.

(a) When a program authorized by this chapter or Chapter XIV of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program document required to be executed in accordance with part 3 of this title;

(2) Easements entered into under part 1410 of this title;

(3) Power of attorney;

(4) Such other program documents as determined by FSA or CCC.

(c) An individual; duly authorized officer of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; or conservator may delegate to another the authority to act on their behalf with respect to FSA and CCC programs administered by USDA service center agencies by execution of a Power of Attorney, or such other form as approved by the Deputy Administrator. FSA and CCC may, at their discretion, allow the delegations of authority by other individuals through use of the Power of Attorney or such other form as approved by the Deputy Administrator.

(d) Notwithstanding another provision of this regulation or any other FSA or CCC regulation in this title, a parent may execute documents on behalf of a minor child unless prohibited by a statute or court order.

(e) Notwithstanding any other provision in this title, an authorized agent of the Bureau of Indian Affairs (BIA) of the United States Department of Interior may sign as agent for landowners with properties affiliated with or under the management or trust of the BIA. For collection purposes, such payments will be considered as being made to the persons who are the beneficiaries of the payment or may, alternatively, be considered as an obligation of all persons on the farm in general. In the event of a need for a refund or other claim may be collected, among other means, by other monies due such persons or the farm.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004]

### § 718.10 Time limitations.

Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is with a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

### § 718.11 Disqualification due to Federal crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance, after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) The FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(8) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to FSA that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person will be ineligible for payments under the programs specified in paragraph (a) of this section that are funded by FSA for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

[72 FR 63284, Nov. 8, 2007]

## Subpart B—Determination of Acreage and Compliance

SOURCE: 68 FR 16176, Apr. 3, 2003, unless otherwise noted.

### §718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage or production of a crop when the request is made:

(1) After the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in §718.103;

(2) After the farm operator has furnished production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the crop's existence in the field and use made of the crop, or the lack of the crop due to a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage and the allowable tolerance as defined in this part, the producer must destroy the excess acreage and pay for FSA to verify destruction, in order to keep the measurement service guarantee.

### §718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraphs (b)(1) through (b)(6) of

this section must annually submit accurate information as required by these provisions.

(b)(1) Participants in the programs governed by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs governed by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a marketing assistance loan or loan deficiency payment is requested;

(3) Participants in the programs governed by part 1410 of this title must report the use of land enrolled in such programs;

(4) All participants in the programs governed by part 1437 of this title must report all acreage in the county of the eligible crop in which the producer has a share;

(5) Participants in the programs governed by part 723 of this chapter and part 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero;

(6) All participants in the programs governed by parts 1412, 1421, and 1427 of this title must report the use of all cropland on the farm.

(7) All producers requesting to report acreage as prevented planted or failed must provide documentation to FSA where the farm is administered that meets the provisions of § 718.103.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, producer of the crop on the farm, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

[68 FR 16176, Apr. 3, 2003, as amended at 71 FR 13741, Mar. 17, 2006]

### § 718.103 Prevented planted and failed acreage.

(a) Prevented planting is the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC. The eligible cause of loss that prevented the planting must have:

(1) Occurred after a previous planting period for the crop;

(2) Occurred before the final planting date for the crop in the applicable crop year or, in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Similarly affected other producers in the area, as determined by CCC.

(b) To be approved by FSA as prevented planted acreage:

(1) The acreage must have been reported within 15 calendar days after the latter of

(i) The occurrence of prevented planting, or

(ii) The end of the planting period;

(2) The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision; and

(3) The prevented planted acreage report must be acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage:

(1) The producer must show there was the intent to plant the acreage by providing documentation of field preparation, seed purchase and any other information that shows the acreage could have been planted and harvested under normal weather conditions, and

(2) The producer must show that the amount of the prevented planted acreage credit is consistent with prior years' planting history for the farm.

(d) Eligible prevented planting acreage will be determined on the basis of the producer's intent to plant the crop acreage and possession of, or access to, resources to plant, grow, and harvest the crop, as applicable.

(e) Prevented planting acreage credit is not provided on acreage that had either a previous or subsequent crop planted on the acreage, unless the COC determines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

(3) Both the initial and subsequent planted crops were planted or prevented-planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(f) Prevented planted acreage credit will not be given to crops where the prevented-planted acreage was affected by drought, unless:

(1) On the final planting date for non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather, as determined by CCC; and

(2) Prolonged precipitation deficiencies exceeded the D2 level as determined using the U.S. Drought Monitor; and

(3) Verifiable information is collected from sources whose business or purpose it is to record weather conditions, as determined by CCC, and including but not limited to the local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planted acreage credit under this part shall apply to irrigated crops where the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions if there was not a reasonable probability of having adequate water to carry out an irrigation practice.

(h) Acreage ineligible for prevented planting coverage includes, but is not limited to acreage:

(1) Which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(2) 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 and Wetland Reserve Programs; and

(3) Not planted because of a management decision.

(i) Failed acreage is acreage that was planted with the proper equipment during the planting period but failed as a result of an eligible cause of loss, as determined by CCC.

(j) To be approved by CCC as failed acreage the acreage must have been reported as failed acreage before disposition of the crop, and the acreage must have been planted under normal conditions but failed as the result of a natural disaster and not a management decision. Producers who file a failed acreage report must have the request acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(k) To receive failed acreage credit the producer must show all of the following:

(1) That the acreage was planted under normal conditions using the proper equipment with the intent to harvest the acreage.

(2) Provide documentation that the crop was planted using farming practices consistent for the crop and area, but could not be brought to harvest because of disaster-related conditions.

(l) The eligible cause for failed acreage must have:

(1) Occurred after the crop was planted, and

(2) Before the normal harvest date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Other producers in the area were similarly affected as determined by CCC.

(m) Eligible failed acreage will be determined on the basis of the producer planting the crop under normal conditions with the expectation to take the crop to harvest.

(n) Acreage ineligible for failed acreage credit includes, but is not limited to acreage:

(1) Which was planted using methods that could not be considered normal for the area and without the expectation of harvest;

(2) Used for conservation purposes or intended to be or considered to have been un-harvested under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs; and

(3) That failed because of a management decision.

[71 FR 13741, Mar. 17, 2006]

### § 718.104 Late-filed and revised acreage reports.

(a) Late-filed acreage reports may be accepted after the final reporting date, and be considered timely filed, if both of the following apply:

(1) The crop or identifiable crop residue is in the field, and

(2) The acreage has not already been determined by FSA.

(b) The farm operator filing a report late shall pay the cost of a farm inspection unless FSA determines that failure to report in a timely manner was beyond the producer's control.

(c) Revised acreage reports may be filed with respect to 2005 and subsequent years to change the acreage reported if:

(1) The acreage has not already been determined by FSA; and

(2) Actual crop or residue is present in the field.

(d) Revised reports shall be filed and accepted:

(1) At any time for all crops if the crop or residue still exists in the field for inspection to verify the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the producer was in compliance with all other program requirements at the reporting date.

[71 FR 13742, Mar. 17, 2006]

### § 718.105 Tolerances, variances, and adjustments.

(a) Tolerance is the amount by which the determined acreage for a crop may differ from the reported acreage or allotment for the crop and still be considered in compliance with program requirements under §§ 718.102(b)(1), (b)(3) and (b)(5).

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements.

(c) Tolerance rules do not apply to:

(1) Program requirements of §§ 718.102(b)(2), (b)(4) and (b)(6);

(2) Official fields when the entire field is devoted to one crop;

(3) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or

(4) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.

(d) An administrative variance is applicable to all allotment crop acreages. Allotment crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

| Effective acreage allotment is within this range | Administrative variance |
|---|---|
| 0.01 to 0.99 | 0.01 |
| 1.00 to 1.49 | 0.02 |
| 1.50 to 1.99 | 0.03 |
| 2.00 to 2.49 | 0.04 |
| 2.50 to 2.99 | 0.05 |
| 3.00 to 3.49 | 0.06 |
| 3.50 to 3.99 | 0.07 |
| 4.00 to 4.49 | 0.08 |
| 4.50 and up | 0.09 |

(e) A tolerance applies to tobacco, other than flue-cured or burley, if the measured acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective farm acreage allotment to avoid marketing quota penalties or receive price support.

(f) If the acreage report for a crop is outside the tolerance for that crop:

(1) FSA may consider the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5) not to have been met, and;

(2) Participants may be ineligible for all or a portion of payments or benefits

subject to the requirements of §§718.102 (b)(1), (b)(3) and (b)(5).

### §718.106 Non-compliance and fraudulent acreage reports.

Participants that knowingly and willfully provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits subject to the requirements of §§718.102 (b)(1), (b)(3) and (b)(5):

(a) The county committee determines that the acreage report filed according to §§718.102 (b)(1), (b)(3) and (b)(5) is inaccurate, and;

(b) A good-faith effort to accurately report the acreage was not made because the report was knowingly and willfully falsified.

### §718.107 Acreages.

(a) If an acreage has been established by FSA for an area delineated on an aerial photograph or within a GIS, such acreage will be recognized by the county committee as the acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until an authorized representative of FSA verifies the boundaries.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to a deduction or adjustment except as otherwise provided in this part.

### §718.108 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of; a 40 inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of actual spacing between those rows or the normal spacing in the field. For example, if the crop is planted in single, wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted if it is determined that the acreage is more sparsely planted than normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in case of tobacco, or where other circumstances are present which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

### §718.109 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under §718.108 shall be deducted from the acreage of the crop if such area

meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

(2) For tobacco—three-hundredths (.03) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width may be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses—one-tenth (.10) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 217.8 feet (33 links) in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

### § 718.110 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm inspection to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

### § 718.111 Notice of measured acreage.

Notice of measured acreage shall be provided by FSA and mailed to the farm operator. This notice shall constitute notice to all parties who have ownership, leasehold interest, or other, in such farm.

### § 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if they pay the cost of the redetermination. The request must be submitted to FSA within 15 calendar days after the date of the notice described in §§ 718.110 or 718.111, or within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. A redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

## Subpart C—Reconstitution of Farms, Allotments, Quotas, and Bases

SOURCE: 68 FR 16178, Apr. 3, 2003, unless otherwise noted.

### §718.201 Farm constitution.

(a) In order to implement agency programs and monitor farmer compliance with regulations, the agency must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or groups of land 'constitute' an individual unit or farm. Land, which has been properly constituted under prior regulations, shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by an individual entity or joint operation as a single farming unit except that it shall not include:

(1) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from other tracts;

(2) Land under a lease agreement of less than 1 year duration;

(3) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is contiguous;

(ii) The land is located in counties that are contiguous in the same State if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in §718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally-owned land;

(5) State-owned wildlife lands unless the former owner has possession of the land under a leasing agreement; and

(6) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program; and

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit.

(b)(1) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (a) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase amount of program benefits received;

(2) The farm was not properly constituted the previous time;

(3) An owner requests in writing that the land no longer be included in a farm composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information;

(5) The county committee determines that tracts included in a farm are not being operated as a single farming unit.

(d) Reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

### § 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent, court-appointed guardian, or other person responsible for the minor child, unless the parent or guardian has no interest in the minor's farm or production from the farm, and the minor:

(1) Is a producer on a farm;

(2) Maintains a separate household from the parent or guardian;

(3) Personally carries out the farming activities; and

(4) Maintains a separate accounting for the farming operation.

(c) A minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

(f) The county committee shall require specific proof of ownership.

(g) Land owned by different persons of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(h) All land operated as a single unit and owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock, or where the parent is owned and operated by subsidiary corporations, shall be constituted as one farm.

### § 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

### § 718.204 Reconstitution of allotments, quotas, and bases.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a direct and counter-cyclical program contract in accordance with part 1413 of this title will be effective for the current year if initiated on or before August 1 or prior to the issuance of DCP payments for the farm or farms being reconstituted.

(c) For tobacco farms, a reconstitution will be effective for the current

year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

### § 718.205 Substantive change in farming operation, and changes in related legal entities.

(a) Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Avoid damages or penalties under a contract or statute;

(iii) Correct an erroneous acreage report; or

(iv) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs of this title, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

### § 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

(a) The methods for dividing farms, tracts, allotments, quotas, and bases in order of precedence, when applicable, are estate, designation by landowner, contribution, cropland, DCP cropland, default, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the prorata distribution of allotments, quotas, and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and bases, such allotments, quotas, and bases shall be apportioned in the manner agreed to in

writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and bases have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and bases, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

(2) If the county committee determines that allotments, quotas, and bases cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(3) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(3) of this section. If the owner does not furnish a revised designation of allotments, quotas, and bases within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(3) of this section, the county committee will divide the allotments, quotas, and bases in a pro-rata manner in accordance with paragraphs (d) through (h) of this section.

(3) A landowner may designate a manner in which allotments, quotas, and bases are divided according to this paragraph.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments, quotas, or bases, shall be assigned to that part in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part that has been owned for 3 years or more.

(4) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(5) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(3) of this section.

(d)(1) The contribution method is the pro-rata distribution of a parent farm's allotments and quotas to each tract as the tract contributed to the allotments and quotas at the time of combination

and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(2) The county committee determines and the State committee or a representative thereof concurs, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming.

(e) The cropland method is the prorata distribution of allotments and quotas to separate tracts proportionately to the tract's contribution to the cropland for the parent tract. This method shall be used if paragraphs (b) through (d) of this section do not apply unless the county committee determines that division by the history method would result in more representative allotments and quotas than the cropland method, taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(f)(1) The history method is the prorata distribution of allotments and quotas to separate tracts on the basis of the operation normally carried out on each tract of the parent farm. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in a more accurate prorata distribution of allotments and quotas based on actual contribution of the tract to the totals of the parent farm than the cropland method would; and

(ii) Obtains written consent of all owners to use the history method.

(2) The county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(g) The DCP cropland method is the pro-rata distribution of bases to the resulting tracts in the same proportion to the DCP cropland that each resulting tract bears to the DCP cropland for the parent tract. This method of division shall be used if paragraphs (b) and (c) of this section do not apply.

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated.

(i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(j) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs; or

(4) With one resulting farm receiving all of the quota.

### § 718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and bases, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and bases for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

## Subpart D—Equitable Relief From Ineligibility

SOURCE: 67 FR 66307, Oct. 31, 2002, unless otherwise noted.

### § 718.301 Applicability.

(a) This subpart is applicable to programs administered by the Farm Service Agency under chapters VII and XIV of this title, except for an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). Administration of this subpart shall be under the supervision of the Deputy Administrator, except that such authority shall not limit the exercise of authority allowed State Executive Directors of the Farm Service agency as provided for in § 718.307.

(b) Sections 718.303, 718.304, and 718.307 do not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, may be applied.

(c) Section 718.306 does not apply to a function performed under either section 376 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), or a conservation program administered by the Natural Resources Conservation Service of the United States Department of Agriculture.

### § 718.302 Definitions and abbreviations.

In addition to the definitions provided in § 718.2 of this part, the following terms apply to this subpart:

*Agricultural commodity* means any agricultural commodity, food, feed, fiber, or livestock that is subject to a covered program.

*Covered program* means a program specified in § 718.301 of this subpart.

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

*OGC* means the Office of the General Counsel of the United States Department of Agriculture.

*SED* means, for activities within a particular state, the State Executive Director of the United States Department of Agriculture, FSA, for that state.

### § 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, action or inaction by a participant in a covered program that is to the detriment of the participant, and that is based upon good faith reliance on the action or advice of an authorized representative of a County or State FSA Committee, may be approved by the Administrator, FSA or the Executive Vice President, CCC, as applicable, or their designee, as meeting the requirements of the program, and benefits may be extended or payments made in accordance with § 718.305.

(b) This section applies only to a participant who relied upon the action of, or information provided by, a county or State FSA committee or an authorized representative of such committee and the participant acted, or failed to act, as a result of the Agency action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

### § 718.304 Failure to fully comply.

(a) Under a covered program, when the failure of a participant to fully comply with the terms and conditions of a program authorized by this chapter precludes the providing of payments or benefits, relief may be authorized in accordance with § 718.305 if

the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the FSA approval official to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

### §718.305 Forms of relief.

(a) The Administrator of FSA, Executive Vice President of CCC, or their designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

### §718.306 Finality.

(a) A determination by a State or county FSA committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

### §718.307 Special relief approval authority for State Executive Directors.

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than $20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than $5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than $1,000,000.

(b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of

such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that the program participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative in accordance with the provisions of this subpart, or that the producer otherwise failed, in good faith, to fully comply with the requirements of the program and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under $20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.

# SUBCHAPTER C—REGULATIONS FOR WAREHOUSES

## PART 735—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

### Subpart A—General Provisions

Sec.
735.1 Applicability.
735.2 Administration.
735.3 Definitions.
735.4 Fees.
735.5 Penalties.
735.6 Suspension, revocation and liquidation.
735.7 Return of suspended or revoked certificates of licensing or certificates of authorization.
735.8 Appeals.
735.9 Dispute resolution and arbitration of private parties.
735.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.
735.11 Lost or destroyed certificates of licensing, authorization or agreements.
735.12 Safe keeping of records.
735.13 Information of violations.
735.14 Bonding and other financial assurance requirements.

### Subpart B—Warehouse Licensing

735.100 Application.
735.101 Financial records and reporting requirements.
735.102 Financial assurance requirements.
735.103 Amendments to license.
735.104 Insurance requirements.
735.105 Care of agricultural products.
735.106 Excess storage and transferring of agricultural products.
735.107 Warehouse charges and tariffs.
735.108 Inspections and examinations of warehouses.
735.109 Disaster loss to be reported.
735.110 Conditions for delivery of agricultural products.
735.111 Fair treatment.
735.112 Terminal and futures contract markets

### Subpart C—Inspectors, Samplers, Classifiers, and Weighers

735.200 Service licenses.
735.201 Agricultural product certificates; format.
735.202 Standards of grades for other agricultural products.

### Subpart D—Warehouse Receipts

735.300 Warehouse receipt requirements.
735.301 Notification requirements.
735.302 Paper warehouse receipts.
735.303 Electronic warehouse receipts.

### Subpart E—Electronic Providers

735.400 Administration.
735.401 Electronic warehouse receipt and USWA electronic document providers.
735.402 Providers of other electronic documents.
735.403 Audits.
735.404 Schedule of charges and rates.

AUTHORITY: 7 U.S.C. 241 *et seq.*

SOURCE: 67 FR 50763, Aug. 5, 2002, unless otherwise noted.

## Subpart A—General Provisions

### § 735.1 Applicability.

(a) The regulations of this part set forth the terms and conditions under which the Secretary of Agriculture through the Farm Service Agency (FSA) will administer the United States Warehouse Act (USWA or the Act) and sets forth the standards and the terms and conditions a participant must meet for eligibility to act under the USWA. The extent the provisions of this part are more restrictive, or more lenient, with respect to the same activities governed by State law, the provisions of this part shall prevail.

(b) Additional terms and conditions may be set forth in applicable licensing agreements, provider agreements and other documents.

(c) Compliance with State laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part.

### § 735.2 Administration.

(a) FSA will administer all provisions and activities regulated under the Act under the general direction and supervision of the FSA's Deputy Administrator, Commodity Operations (DACO), or a designee.

(b) DACO may waive or modify the licensing or authorization requirements or deadlines in cases where lateness or

failure to meet such requirements does not adversely affect the licensing or authorizations operated under the Act.

(c) DACO will provide affected licensees or authorized providers with changes to their licensing or provider agreements before the effective date.

(d) Licensing and authorization agreement updates will be available at:

(1) DACO's USWA website, and

(2) The following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW, Washington, DC 20250–0550.

### § 735.3 Definitions.

Words used in this part will be applicable to the activities authorized by this part and will be used in all aspects of administering the Act.

*Access* means the ability, when authorized, to read, change, and transfer warehouse receipts or other applicable document information retained in a central filing system.

*Agricultural product* means an agriculturally-produced product stored or handled for the purposes of interstate or foreign commerce, including a processed product of such agricultural product, as determined by DACO.

*Central filing system (CFS)* means an electronic system operated and maintained by a provider, as a disinterested third party, authorized by DACO where information relating to warehouse receipts, USWA documents and other electronic documents is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

*Certificate* means a USWA document that bears specific assurances under the Act or warrants a person to operate or perform in a certain manner and sets forth specific responsibilities, rights, and privileges granted to the person under the Act.

*Control of the facility* means ultimate responsibility for the operation and integrity of a facility by ownership, lease, or operating agreement.

*Department* means the Department of Agriculture.

*Electronic document* means any document that is generated, sent, received, or stored by electronic, optical, or similar means, including, but not limited to, electronic data interchange, advanced communication methods, electronic mail, telegram, telex, or telecopy.

*Electronic warehouse receipt* (EWR) means a warehouse receipt that is authorized by DACO to be issued or transmitted under the Act in the form of an electronic document.

*Examiner* means an individual designated by DACO for the purpose of examining warehouses or for any other activities authorized under the Act.

*Financial assurance* means the surety or other financial obligation authorized by DACO that is a condition of receiving a license or authorization under the Act.

*Force majeure* means severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military, nonavailability of transportation facilities, or any other cause beyond the control of the warehouse operator or provider that renders performance impossible.

*Holder* means a person that has possession in fact or by operation of law of a warehouse receipt, USWA electronic document, or any electronic document.

*License* means a license issued under the Act by DACO.

*Licensing agreement* means the document and any amendment or addenda to such agreement executed by the warehouse operator and FSA specifying licensing terms and conditions specific to the warehouse operator and the agricultural product licensed to be stored.

*Non-storage agricultural product* means an agricultural product received temporarily into a warehouse for conditioning, transferring or assembling for shipment, or lots of an agricultural product moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed.

*Official Standards of the United States* means the standards of the quality or condition for an agricultural product, fixed and established under (7 U.S.C. 51) the United States Cotton Standards Act, (7 U.S.C. 71) the United States

Grain Standards Act, (7 U.S.C. 1622) the Agricultural Marketing Act of 1946, or other applicable official United States Standards.

*Other electronic documents* (OED) means those electronic documents, other than an EWR or USWA electronic document, that may be issued or transferred, related to the shipment, payment or financing of agricultural products that DACO has authorized for inclusion in a provider's CFS.

*Person* means a person as set forth in 1 U.S.C. 1, a State; or a political subdivision of a State.

*Provider* means a person authorized by DACO, as a disinterested third party, which maintains one or more confidential and secure electronic systems independent of any outside influence or bias in action or appearance.

*Provider agreement* means the document and any amendment or addenda to such agreement executed by the provider and FSA that sets forth the provider's responsibilities concerning the provider's operation or maintenance of a CFS.

*Receipt* means a warehouse receipt issued in accordance with the Act, including an electronic warehouse receipt.

*Schedule of charges* means the tariff or uniform rate or amount charged by an authorized person for specific services offered or rendered under the Act.

*Schedule of fees* means the fees charged and assessed by FSA for licensing, provider agreements or services furnished under the Act to help defray the costs of administering the Act, and as such are shown in a schedule of fees attached to the licensing or provider agreement.

*Service license* means the document and any amendment to such document, issued under the Act by DACO to individuals certified competent by the licensed warehouse operator to perform inspection, sampling, grading classifying, or weighing services according to established standards and procedures, set forth in § 735.202, at the specific warehouse license.

*Stored agricultural products* means all agricultural products received into, stored within, or delivered out of the warehouse that are not classified as a non-storage agricultural product under this part.

*User* means a person that uses a provider's CFS.

*USWA electronic document* means a USWA electronic document initiated by DACO to be issued, transferred or transmitted that is not identified as an EWR or OED in the appropriate licensing or provider agreement or as determined by DACO.

*Warehouse* means a structure or other authorized storage facility, as determined by DACO, in which any agricultural product may be stored or handled for the purpose of interstate or foreign commerce.

*Warehouse capacity* means the maximum quantity of an agricultural product that the warehouse will accommodate when stored in a manner customary to the warehouse as determined by DACO.

*Warehouse operator* means a person lawfully engaged in the business of storing or handling agricultural products.

*Warehousing activities and practices* means any legal, operational, managerial or financial duty that a warehouse operator has regarding an agricultural product.

**§ 735.4 Fees.**

(a) FSA will assess persons covered by the Act fees to cover the costs of administering the Act.

(b) Warehouse operators, licensees, applicants, or providers must pay:

(1) An annual fee as provided in the applicable licensing or provider agreement; and

(2) Fees that FSA assesses for specific services, examinations and audits, or as provided in the applicable licensing or provider agreement.

(c) The schedule of fees showing the current fees or any annual fee changes will be provided as an addendum to the applicable licensing or provider agreement or/and:

(1) Will be available at DACO's USWA Web site, or

(2) May be requested at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of

Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(d) At the sole discretion of DACO, these fees may be waived.

### § 735.5 Penalties.

If a person fails to comply with any requirement of the Act, the regulations set forth in this part or any applicable licensing or provider agreement, DACO may assess, after an opportunity for a hearing as provided in § 735.8, a civil penalty:

(a) Of not more than $25,000 per violation, if an agricultural product is not involved in the violation; or

(b) Of not more than 100 percent of the value of the agricultural product, if an agricultural product is involved in the violation.

### § 735.6 Suspension, revocation and liquidation.

(a) DACO may, after an opportunity for a hearing as provided in § 735.8, suspend, revoke or liquidate any license or agreement issued under the Act, for any violation of or failure to comply with any provision of the Act, regulations or any applicable licensing or provider agreement.

(b) The reasons for a suspension, revocation or liquidation under this part include, but are not limited to:

(1) Failure to perform licensed or authorized services as provided in this part or in the applicable licensing or provider agreement;

(2) Failure to maintain minimum financial requirements as provided in the applicable licensing or provider agreement;

(3) Failure to submit a proper annual financial statement within the established time period as provided in the applicable licensing or provider agreement.

(4) Failure to maintain control of the warehouse or provider system.

(5) The warehouse operator or provider requests closure, cancellation or liquidation. and

(6) Commission of fraud against FSA, any depositor, EWR or OED holder or user, or any other function or operation under this part.

(c) FSA retains USWA's full authority over a warehouse operator or provider for one year after such license revocation or provider agreement termination or until satisfaction of any claims filed against such warehouse operator or provider are resolved, whichever is later.

(d) Upon DACO's determination that continued operation of a warehouse by a warehouse operator or an electronic provider system by a provider is likely to result in probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users. DACO may immediately suspend, close, or take control and begin an orderly liquidation of such warehouse inventory or provider system data as provided in this part or in the applicable licensing or provider agreement.

(e) Any disputes involving probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users will be determined by DACO for the benefit of the depositors, or EWR or OED holders and users and such determinations shall be final.

### § 735.7 Return of suspended or revoked certificates of licensing or certificates of authorization.

(a) When a license issued to a warehouse operator or service license ends or is suspended or revoked by DACO, such certificates of licensing and applicable licensing agreement and certificates of authorization must be immediately surrendered and returned to DACO.

(b) When an agreement with a provider ends or is suspended or revoked by DACO, such certificates of authorization and applicable provider agreement must be immediately surrendered to DACO

### § 735.8 Appeals.

(a) Any person who is subject to an adverse determination made under the Act may appeal the determination by filing a written request with DACO at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(b) Any person who believes that they have been adversely affected by a

determination under this part must seek review by DACO within twenty-eight calendar days of such determination, unless provided with notice by DACO of a different deadline.

(c) The appeal process set forth in this part is applicable to all licensees and providers under any provision of the Act, regulations or any applicable licensing agreement as follows:

(1) DACO will notify the person in writing of the nature of the suspension, revocation or liquidation action;

(2) The person must notify DACO of any appeal of its action within twenty-eight calendar days;

(3) The appeal and request must state whether:

(i) A hearing is requested,

(ii) The person will appear in person at such hearing, or

(iii) Such hearing will be held by telephone;

(4) DACO will provide the person a written acknowledgment of their request to pursue an appeal;

(5) When a person requests an appeal and does not request a hearing DACO will allow that person:

(i) To submit in writing the reasons why they believe DACO's determination to be in error,

(ii) Twenty-eight calendar days from the receipt of the acknowledgment to file any statements and documents in support of their appeal, unless provided with notice by DACO of a different deadline, and

(iii) An additional fourteen calendar days to respond to any new issues raised by DACO in response to the person's initial submission, unless provided with notice by DACO of a different deadline;

(6) If the person requests to pursue an appeal and requests a hearing, DACO will:

(i) Notify the person of the date of the hearing,

(ii) Determine the location of the hearing, when the person asks to appear in person,

(iii) Notify the person of the location of the hearing,

(iv) Afford the person twenty-eight calendar days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal, unless provided with notice by DACO of a different deadline, and

(v) Allow the person an additional fourteen calendar days from the date of the hearing to submit any additional material, unless provided with notice by DACO of a different deadline;

(7) Determinations of DACO will be final and no further appeal within USDA will be available except as may be specified in the final determination of DACO; and

(8) A person may not initiate an action in any court of competent jurisdiction concerning a determination made under the Act prior to the exhaustion of the appeal process set forth in this section.

### § 735.9 Dispute resolution and arbitration of private parties.

(a) A person may initiate legal action in any court of competent jurisdiction concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the Act.

(b) Any claim for noncompliance or an unresolved dispute between a warehouse operator or provider and another party with respect to activities authorized under the Act may be resolved by the parties through mutually agreed-upon arbitration procedures or as may be prescribed in the applicable licensing or provider agreement. No arbitration determination or award will affect DACO's authority under the Act.

(c) In no case will USDA provide assistance or representation to parties involved in an arbitration proceeding arising with respect to activities authorized under the Act.

### § 735.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.

(a) The warehouse operator must post, in a conspicuous place in the principal place where warehouse receipts are issued, any applicable certificate furnished by DACO that the warehouse operator is an authorized licensee under the Act.

(b) Immediately upon receipt of their certificate of service licensing or any modification or extension thereof under the Act, the licensee and warehouse operator must jointly post the

same, and thereafter, except as otherwise provided in the regulations in this part or as prescribed in the applicable licensing agreement, keep such certificate of licensing conspicuously posted in the office where all or most of the services are done, or in such place as may be designated by DACO.

(c) The provider must post, in a conspicuous place in the principal place of business, any applicable certificate of authorization furnished by DACO that the provider is authorized to offer and provide specific services under the Act.

### § 735.11 Lost or destroyed certificates of licensing, authorization or agreements.

FSA will replace lost or destroyed certificates of licensing, certificate of authorization or applicable agreement upon satisfactory proof of loss or destruction. FSA will mark such certificates or agreements as duplicates.

### § 735.12 Safe keeping of records.

Each warehouse operator or provider must take necessary precautions to safeguard all records, either paper or electronic format, from destruction.

### § 735.13 Information of violations.

Every person licensed or authorized under the Act must immediately furnish DACO any information they may have indicating that any provision of the Act or the regulations in this part has been violated.

### § 735.14 Bonding and other financial assurance requirements.

(a) As a condition of receiving a license or authorization under the Act, the person applying for the license or authorization must execute and file with DACO a bond or provide such other financial assurance as DACO determines appropriate to secure the person's compliance with the Act.

(b) Such bond or assurance must be for a period of not less than one year and in such amount as required by DACO.

(c) Failure to provide for, or renew, a bond or a financial assurance instrument will result in the immediate and automatic revocation of the warehouse operator's license or provider's agreement.

(d) If DACO determines that a previously accepted bond or other financial assurance is insufficient, DACO may immediately suspend or revoke the license or authorization covered by the bond or other financial assurance if the person that filed the bond or other financial assurance does not provide such additional bond or other financial assurance as DACO determines appropriate.

(e) To qualify as a suitable bond or other financial assurance, the entity issuing the bond or other financial assurance must be subject to service of process in lawsuits or legal actions on the bond or other financial assurance in the State in which the warehouse is located.

## Subpart B—Warehouse Licensing

### § 735.100 Application.

(a) An applicant for a license must submit to DACO information and documents determined by DACO to be sufficient to conclude that the applicant can comply with the provisions of the Act. Such documents must include a current review or an audit-level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants. For any entity that is not an individual, a document that establishes proof of the existence of the entity, such as:

(1) For a partnership, an executed partnership agreement; and

(2) For a corporation:

(i) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(ii) Bylaws; and

(iii) Permits to do business; and

(3) For a limited partnership, an executed limited partnership agreement; and

(4) For a limited liability company:

(i) Articles of organization or similar documents; and

(ii) Operating agreement or similar agreement.

(b) The warehouse facilities of an operator licensed under the Act must, as determined by DACO, be:

(1) Physically and operationally suitable for proper storage of the applicable agricultural product or agricultural products specified in the license;

(2) Operated according to generally accepted warehousing activities and practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and

(3) Subject to the warehouse operator's control of the facility including all contiguous storage space with respect to such facilities.

(c) As specified in individual licensing agreements, a warehouse operator must:

(1) Meet the basic financial requirements determined by DACO; and

(2) Meet the net worth requirements determined by DACO;

(d) In order to obtain a license, the warehouse operator must correct any exceptions made by the warehouse examiner at the time of the original warehouse examination.

(e) DACO may issue a license for the storage of two or more agricultural products in a single warehouse as provided in the applicable licensing agreements. The amount of the bond or financial assurance, net worth, and inspection and license fees will be determined by DACO in accordance with the licensing agreements applicable to the specific agricultural product, based upon the warehouses' total capacity for storing such product, that would require:

(1) The largest bond or financial assurance;

(2) The greatest amount of net worth; and

(3) The greatest amount of fees.

### § 735.101 Financial records and reporting requirements.

(a) Warehouse operators must maintain complete, accurate, and current financial records that must be available to DACO for review or audit at DACO's request as may be prescribed in the applicable licensing agreement.

(b) Warehouse operators must, annually, present a financial statement as may be prescribed in the applicable licensing agreement to DACO.

### § 735.102 Financial assurance requirements.

(a) Warehouse operators must file with DACO financial assurances approved by DACO consisting of:

(1) A warehouse operator's bond; or

(2) Obligations that are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the bond otherwise required to be furnished, together with an irrevocable power of attorney authorizing DACO to collect, sell, assign and transfer such obligations in case of any default in the performance of any of the conditions required in the licensing agreement; or

(3) An irrevocable letter of credit issued in the favor of DACO with a term of not less than two years; or

(4) A certificate of participation in, and coverage by, an indemnity or insurance fund as approved by DACO, established and maintained by a State, backed by the full faith and credit of the applicable State, which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act. If a warehouse operator files a bond or financial assurance in the form of a certification of participation in an indemnity or insurance fund, the certification may only be used to satisfy any deficiencies in assets above the minimum net worth requirement as prescribed in the applicable licensing agreement. A certificate of participation and coverage in this fund must be furnished to DACO annually; or

(5) Other alternative instruments and forms of financial assurance approved by DACO as may be prescribed in the applicable licensing agreement.

(b) The warehouse operator may not withdraw obligations required under this section until one year after license termination or until satisfaction of any claims against the obligations, whichever is later.

### § 735.103 Amendments to license.

FSA will issue an amended license upon:

(a) Receipt of forms prescribed and furnished by DACO outlining the requested changes to the license;

(b) Payment of applicable licensing and examination fees;

(c) Receipt of bonding or other financial assurance if required in the applicable licensing agreement; and

(d) Receipt of a report on the examination of the proposed facilities pending inclusion or exclusion, if determined necessary by DACO.

### § 735.104 Insurance requirements.

Each warehouse operator must comply fully with the terms of insurance policies or contracts covering their licensed warehouse and all products stored therein, and must not commit any acts, nor permit others to do anything, that might impair or invalidate such insurance.

### § 735.105 Care of agricultural products.

Each warehouse operator must at all times, including during any period of suspension of their license, exercise such care in regard to stored and nonstorage agricultural products in their custody as required in the applicable licensing agreement.

### § 735.106 Excess storage and transferring of agricultural products.

(a) If at any time a warehouse operator stores an agricultural product in a warehouse subject to a license issued under the Act in excess of the warehouse capacity for which it is licensed, such warehouse operator must immediately notify DACO of such excess storage and the reason for the storage.

(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, by other methods as may be provided in the applicable licensing agreement, or as authorized by DACO.

### § 735.107 Warehouse charges and tariffs.

(a) A warehouse operator must not make any unreasonable or exorbitant charge for services rendered.

(b) A warehouse operator must follow the terms and conditions for each new or revised warehouse tariff or schedule of charges and rates as prescribed in the applicable licensing agreement.

### § 735.108 Inspections and examinations of warehouses.

(a) Warehouse operators must permit any agent of the Department to enter and inspect or examine, on any business day during the usual hours of business, any licensed warehouse, the offices of the warehouse operator, the books, records, papers, and accounts.

(b) Routine and special inspections and examinations will be unannounced.

(c) Warehouse operators must provide safe access to all storage facilities.

(d) Warehouse operators must inform any agent of the Department, upon arrival, of any hazard.

(e) Agents of the Department must accomplish inspections and examinations of warehouses in a manner that is efficient and cost-effective without jeopardizing any inspection and examination integrity.

### § 735.109 Disaster loss to be reported.

If at any time a disaster or loss occurs at or within any licensed warehouse, the warehouse operator must report immediately the occurrence of the disaster or loss and the extent of damage, to DACO.

### § 735.110 Conditions for delivery of agricultural products.

(a) In the absence of a lawful excuse, a warehouse operator will, without unnecessary delay, deliver the agricultural product stored or handled in the warehouse on a demand made by:

(1) The holder of the warehouse receipt for the agricultural product; or

(2) The person that deposited the agricultural product, if no warehouse receipt has been issued.

(b) Prior to delivery of the agricultural product, payment of the accrued charges associated with the storage or handling of the agricultural product, including satisfaction of the warehouse operator's lien, must be made if requested by the warehouse operator.

(c) When the holder of a warehouse receipt requests delivery of an agricultural product covered by the warehouse receipt, the holder must surrender the warehouse receipt to the warehouse operator before obtaining the agricultural product.

(d) A warehouse operator must cancel each warehouse receipt surrendered to

the warehouse operator upon the delivery of the agricultural product for which the warehouse receipt was issued and in accordance with the applicable licensing agreement.

(e) For the purpose of this part, unless prevented from doing so by force majeure, a warehouse operator will deliver or ship such agricultural products stored or handled in their warehouse as prescribed in the applicable licensing agreement.

### § 735.111 Fair treatment.

(a) Contingent upon the capacity of a warehouse, a warehouse operator will deal in a fair and reasonable manner with persons storing, or seeking to store, an agricultural product in the warehouse if the agricultural product is:

(1) Of the kind, type, and quality customarily stored or handled in the area in which the warehouse is located;

(2) Tendered to the warehouse operator in a suitable condition for warehousing; and

(3) Tendered in a manner that is consistent with the ordinary and usual course of business.

(b) Nothing in this section will prohibit a warehouse operator from entering into an agreement with a depositor of an agricultural product to allocate available storage space.

### § 735.112 Terminal and futures contract markets.

(a) DACO may issue service licenses to weigh-masters or their deputies to perform services relating to warehouse receipts that are deliverable in satisfaction of futures contracts in such contract markets or as may be prescribed in any applicable licensing agreement.

(b) DACO may authorize a registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act that operates in any terminal market or in any futures contract market the official designated by officials of the State in which such market is located if such individual is not:

(1) An owner or employee of the licensed warehouse;

(2) The owner of, or an employee of the owner of, such agricultural product deposited in any such licensed warehouse; or

(3) As may be prescribed in any applicable licensing or provider agreement.

## Subpart C—Inspectors, Samplers, Classifiers, and Weighers

### § 735.200 Service licenses.

(a) FSA may issue to a person a license for:

(1) Inspection of any agricultural product stored or handled in a warehouse subject to the Act;

(2) Sampling of such an agricultural product;

(3) Classification of such an agricultural product according to condition, grade, or other class and certify the condition, grade, or other class of the agricultural product;

(4) Weighing of such an agricultural product and certify the weight of the agricultural product; or

(5) Performing two or more services specified in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section.

(b) Each person seeking a license to perform activities described in this section must submit an application on forms furnished by DACO that contain, at a minimum, the following information:

(1) The name, location and license number of the warehouses where the applicant would perform such activities;

(2) A statement from the warehouse operator that the applicant is competent and authorized to perform such activities at specific locations; and

(3) Evidence that the applicant is competent to inspect, sample, classify, according to grade or weigh the agricultural product.

(c) The warehouse operator will promptly notify DACO in writing of any changes with respect to persons authorized to perform such activities at the licensed warehouse.

### § 735.201 Agricultural product certificates; format.

Each inspection, grade, class, weight or combination certificate issued under the Act by a licensee to perform such services must be:

(a) In a format prescribed by DACO;

(b) Issued and maintained in a consecutive order; and

(c) As prescribed in the applicable licensing or provider agreement and authorized by DACO.

### § 735.202 Standards of grades for other agricultural products.

Official Standards of the United States for any kind, class or grade of an agricultural product to be inspected must be used if such standards exist. Until Official Standards of the United States are fixed and established for the kind of agricultural product to be inspected, the kind, class and grade of the agricultural product must be stated, subject to the approval of DACO. If such standards do not exist for such an agricultural product, the following will be used:

(a) State standards established in the State in which the warehouse is located, (b) In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the agricultural product trade generally in the locality in which the warehouse is located, or

(c) In the absence of the standards set forth in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by DACO.

## Subpart D—Warehouse Receipts

### § 735.300 Warehouse receipt requirements.

(a) Warehouse receipts may be:

(1) Negotiable or non-negotiable;

(2) For a single unit, multiple units, identity preserved or commingled lot; and

(3) In a paper or electronic format that, besides complying with the requirements of the Act, must be in a format as prescribed in the applicable licensing or provider agreement and authorized by DACO.

(b) The warehouse operator must:

(1) At the request of a depositor of an agricultural product stored or handled in a warehouse licensed under the Act, issue a warehouse receipt to the depositor;

(2) Not issue a warehouse receipt for an agricultural product unless the agricultural product is actually stored in their warehouse at the time of issuance;

(3) Not issue a warehouse receipt until the quality, condition and weight of such an agricultural product is ascertained by a licensed inspector and weigher;

(4) Not directly or indirectly compel or attempt to compel the depositor to request the issuance of a warehouse receipt omitting the statement of quality or condition;

(5) Not issue an additional warehouse receipt under the Act for a specific identity-preserved or commingled agricultural product lot (or any portion thereof) if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot;

(6) When issuing a warehouse receipt and purposefully omitting any information, notate the blank to show such intent;

(7) Not deliver any portion of an agricultural product for which they have issued a negotiable warehouse receipt until the warehouse receipt has been surrendered to them and canceled as prescribed in the applicable licensing agreement;

(8) Not deliver more than 90% of the receipted quantity of an agricultural product for which they have issued a non-negotiable warehouse receipt until such warehouse receipt has been surrendered or the depositor or the depositor's agent has provided a written order for the agricultural product and the warehouse receipt surrendered upon final delivery; and

(9) Deliver, upon proper presentation of a warehouse receipt for any agricultural product, and payment or tender of all advances and charges, to the depositor or lawful holder of such warehouse receipt the agricultural product of such identity, quantity, grade and condition as set forth in such warehouse receipt.

(c) In the case of a lost or destroyed warehouse receipt, a new warehouse receipt upon the same terms, subject to the same conditions, and bearing on its

face the number and the date of the original warehouse receipt may be issued.

### § 735.301 Notification requirements.

Warehouse operators must file with DACO the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouse operator, and will promptly notify DACO of any changes with respect to persons authorized to sign.

### § 735.302 Paper warehouse receipts.

Paper warehouse receipts must be issued as follows:

(a) On distinctive paper specified by DACO;

(b) Printed by a printer authorized by DACO; and

(c) Issued, identified and maintained in a consecutive order.

### § 735.303 Electronic warehouse receipts.

(a) Warehouse operators issuing EWR under the Act may issue EWR's for the agricultural product stored in their warehouse. Warehouse operators issuing EWR's under the Act must:

(1) Only issue EWR's through one FSA-authorized provider annually;

(2) Inform DACO of the identity of their provider, when they are a first time user of EWR's, 60 calendar days in advance of issuing an EWR through that provider. DACO may waive or modify this 60-day requirement as set forth in § 735.2(b);

(3) Before issuing an EWR, request and receive from FSA a range of consecutive warehouse receipt numbers that the warehouse will use consecutively for issuing their EWR's;

(4) When using an authorized provider, issue and cancel all warehouse receipts as EWR's;

(5) Cancel an EWR only when they are the holder of the warehouse receipt;

(6) Be the holder of an EWR to correct information contained within any required data field;

(7) Receive written authorization from FSA at least 30 calendar days before changing providers. Upon authorization, they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the authorized provider whom they select; and

(8) Notify all holders of EWR's by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by FSA.

(b) An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt and possesses the following attributes:

(1) The holder of an EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

(2) Only the current holder of the EWR may transfer the EWR to a new holder.

(3) The identity of the holder must be confidential and included as information for every EWR.

(4) Only one person may be designated as the holder of an EWR at any one time.

(5) A warehouse operator may not issue an EWR on a specific identity-preserved or commingled lot of agricultural product or any portion thereof while another valid warehouse receipt representing the same specific identity-preserved or commingled lot of agricultural product remains not canceled. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot.

(6) An EWR may only be issued to replace a paper warehouse receipt if requested by the current holder of the paper warehouse receipt.

(7) Holders and warehouse operators may authorize any other user of their provider or the provider itself to act on their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the warehouse operator and provider.

(c) A warehouse operator not licensed under the Act may, at the option of the warehouse operator, issue EWRs in accordance with this subpart, except this option does not apply to a warehouse operator that is licensed under State law to store agricultural products in a warehouse if the warehouse operator elects to issue an EWR under State law.

## Subpart E—Electronic Providers

### § 735.400 Administration.

This subpart sets forth the regulations under which DACO may authorize one or more electronic systems under which:

(a) Electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be issued or transferred; or

(b) Electronic receipts may be issued and transferred.

### § 735.401 Electronic warehouse receipt and USWA electronic document providers.

(a) To establish a USWA-authorized system to issue and transfer EWR's and USWA electronic documents, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies; one for ''errors and omissions'' and another for ''fraud and dishonesty.'' Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;

(3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

(i) For a partnership, an executed partnership agreement; and

(ii) For a corporation:

(A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(B) Bylaws; and

(C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, or USWA or State EWR's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

(d) Each provider agreement will be automatically renewed annually on

April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

**§ 735.402 Providers of other electronic documents.**

(a) To establish a USWA-authorized system to issue and transfer OED, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;

(3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

(i) For a partnership, an executed partnership agreement; and

(ii) For a corporation:

(A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(B) Bylaws; and

(C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements;

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, USWA or State EWR's or OED's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

(e) In addition to audits prescribed in this section the provider must submit a copy of any audit, examination or investigative report prepared by any Federal regulatory agency with respect to the provider including agencies such as, but not limited to, the Comptroller of the Currency, Department of the Treasury, the Federal Trade Commission, and the Commodity Futures Trading Commission.

**§ 735.403 Audits.**

(a) No later than 120 calendar days following the end of the provider's fiscal year, the provider authorized under §§ 735.401 and 735.402 must submit to FSA an annual audit level financial statement and an electronic data processing audit that meets the minimum requirements as provided in the applicable provider agreement. The electronic data processing audit will be used by DACO to evaluate current computer operations, security, disaster recovery capabilities of the system, and compatibility with other systems authorized by DACO.

(b) Each provider will grant the Department unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the applicable provider agreement.

**§ 735.404 Schedule of charges and rates.**

(a) A provider authorized under §§ 735.401 or 735.402 must furnish FSA with copies of its current schedule of charges and rates for all services as they become effective.

(b) Charges and rates assessed any user by the provider must be in effect for a minimum period of one year.

(c) Providers must furnish FSA and all users a 60-calendar day advance notice of their intent to change any charges and rates.

## PART 743 [RESERVED]

# SUBCHAPTER D—SPECIAL PROGRAMS

## PART 750—SOIL BANK

EDITORIAL NOTE: Part 750 (formerly part 485 of title 6), published at 21 FR 6289, Aug. 22, 1956, and redesignated at 26 FR 5788, June 29, 1961, is no longer carried in the Code of Federal Regulations. This deletion does not relieve any person of any obligation or liability incurred under these regulations, nor deprive any person of any rights received or accrued under the provisions of this part. For FEDERAL REGISTER citations affecting this part, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985,'' published in seven separate volumes.

## PART 760—INDEMNITY PAYMENT PROGRAMS

### Subpart A—Dairy Indemnity Payment Program

PROGRAM OPERATIONS

Sec.
760.1 Administration.
760.2 Definitions.

PAYMENTS TO DAIRY FARMERS FOR MILK

760.3 Indemnity payments on milk.
760.4 Normal marketings of milk.
760.5 Fair market value of milk.
760.6 Information to be furnished.
760.7 Other requirements for affected farmers.
760.8 Application for payments for milk.
760.9 Other legal recourse.

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

760.20 Payments to manufacturers of dairy products.
760.21 Application for payments by manufacturers.
760.22 Information to be furnished by manufacturer.
760.23 Other requirements for manufacturers.

GENERAL PROVISIONS

760.24 Limitation of authority.
760.25 Estates and trusts; minors.
760.26 Appeals.
760.27 Setoffs.
760.28 Overdisbursement.
760.29 Death, incompetency, or disappearance.
760.30 Records and inspection thereof.
760.31 Assignment.
760.32 Instructions and forms.
760.33 Availability of funds.
760.34 Paperwork Reduction Act assigned numbers.

### Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs

760.101 Eligible counties, hurricanes and disaster periods.
760.102 Applicability.
760.103 Administration of HIP, FIP, LIP, and TIP.
760.104 Definitions.
760.105 Application for payment.
760.106 Limitations on payments and other benefits.
760.107 Appeals.
760.108 Offsets, assignments, and debt settlement.
760.109 Records and inspections thereof.
760.110 Refunds; joint and several liability.
760.111 Paperwork Reduction Act assigned number.

### Subpart C—Hurricane Indemnity Program

760.201 Applicability.
760.202 Producer eligibility.
760.203 Payment calculation.

### Subpart D—Feed Indemnity Program

760.301 Applicability.
760.302 Definitions.
760.303 Eligible livestock and producers.
760.304 Application process.
760.305 Payment calculation.

### Subpart E—Livestock Indemnity Program

760.401 Applicability.
760.402 Definitions.
760.403 Eligible owners, contract growers and livestock.
760.404 Application process.
760.405 Payment calculation.

### Subpart F—Tree Indemnity Program

760.501 Applicability.
760.502 Eligible producers and stands.
760.503 Application process.
760.504 Payment calculation.

### Subpart G—Aquaculture program

760.601 Funds availability.

### Subpart H—2006 Livestock Assistance Grant Program

760.701 Funds availability.

### Subpart I—2005–2007 Crop Disaster Program

760.800 Applicability.
760.801 Administration.
760.802 Definitions.
760.803 Eligibility.
760.804 Time and method of application.
760.805 Limitations on payments and other benefits.
760.806 Crop eligibility requirements.
760.807 Miscellaneous provisions.
760.808 General provisions.
760.809 Eligible damaging conditions.
760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.
760.811 Rates and yields; calculating payments.
760.812 Production losses; participant responsibility.
760.813 Determination of production.
760.814 Calculation of acreage for crop losses other than prevented planted.
760.815 Calculation of prevented planted acreage.
760.816 Value loss crops.
760.817 Quality losses for 2005, 2006, and 2007 crops.
760.818 Marketing contracts.
760.819 Misrepresentation, scheme, or device.
760.820 Offsets, assignments, and debt settlement.
760.821 Compliance with highly erodible land and wetland conservation.

### Subpart J—2005–2007 Livestock Indemnity Program

760.900 Administration.
760.901 Applicability.
760.902 Eligible counties and disaster periods.
760.903 Definitions.
760.904 Limitations on payments and other benefits.
760.905 Eligible owners and contract growers.
760.906 Eligible livestock.
760.907 Application process.
760.908 Deceased individuals or dissolved entities.
760.909 Payment calculation.
760.910 Appeals.
760.911 Offsets, assignments, and debt settlement.
760.912 Records and inspections.
760.913 Refunds; joint and several liability.

### Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

760.1000 Applicability.
760.1001 Eligible counties, disaster events, and disaster periods.
760.1002 Definitions.
760.1003 Limitations on payments and other benefits.

### Subpart L—2005–2007 Livestock Compensation Program

760.1100 Applicability.
760.1101 Administration.
760.1102 Definitions.
760.1103 Eligible livestock and producers.
760.1104 Application for payment.
760.1105 Application process.
760.1106 Payment calculation.
760.1107 Appeals.
760.1108 Offsets, assignments, and debt settlement.
760.1109 Recordkeeping and inspections.
760.1110 Refunds; joint and several liability.

### Subpart M—2005–2007 Catfish Grant Program

760.1200 Administration.
760.1201 Application for payment.
760.1202 Eligible producers.
760.1203 Payment calculation.

AUTHORITY: 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704; Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub.L. 110–28.

## Subpart A—Dairy Indemnity Payment Program

AUTHORITY: Pub. L. 106–387, 114 Stat. 1549, and Pub. L. 107–76, 115 Stat. 704.

SOURCE: 43 FR 10535, Mar. 14, 1978, unless otherwise noted.

PROGRAM OPERATIONS

### § 760.1 Administration.

This indemnity payment program will be carried out by FSA under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

### § 760.2 Definitions.

For purposes of this subject, the following terms shall have the meanings specified:

(a) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom he has delegated, or to whom he may hereafter delegate, authority to act in his stead.

(b) *FSA* means the Farm Service Agency, U.S. Department of Agriculture.

(c) *Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA.

(d) *State committee* means the FSA State committee.

(e) *County committee* means the FSA county committee.

(f) *Pesticide* means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 through 135k), and approved for use by the Federal Government.

(g) *Chemicals or Toxic Substances* means any chemical substance or mixture as defined in the Toxic Substances Control Act (15 U.S.C. 2602).

(h) *Nuclear Radiation or Fallout* means contamination from nuclear radiation or fallout from any source.

(i) *Violating Substance* means one or more of the items defined in paragraphs (f), (g), and (h) of this section.

(j) *Public agency* means any Federal, State or local public regulatory agency.

(k) *Affected farmer* means a person who produces whole milk which is removed from the commerical market any time from:

(1) Pursuant to the direction of a public agency because of the detection of pesticide residues in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency, or

(2) Pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) *Affected manufacturer* means a person who manufactures dairy products which are removed from the commercial market pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy products by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(m) *Milk handler* means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he was directed by the public agency to remove his whole milk from the commercial market.

(n) *Person* means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(o) *Application period* means any period during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

(p) *Pay period* means (1) in the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

(q) *Whole milk* means milk as it is produced by cows.

(r) *Commercial market* means (1) the market to which the affected farmer normally delivers his whole milk and from which it was removed because of detection therein of a residue of a violating substance(s) or (2) the market to which the affected manufacturer normally delivers his dairy products and from which they were removed because of detection therein of pesticide residue.

(s) *Removed from the commercial market* means (1) produced and destroyed or fed to livestock, (2) produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk), or (3) produced and otherwise diverted to other than the commercial market.

(t) *Payment subject to refund* means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

(u) *Base period* means the calendar month or 4-week period immediately

preceding removal of milk from the market.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979; 52 FR 17935, May 13, 1987; 53 FR 44001, Nov. 1, 1988; 56 FR 1358, Jan. 14, 1991; 61 FR 18485, Apr. 26, 1996; 71 FR 27190, May 10, 2006]

PAYMENTS TO DAIRY FARMERS FOR MILK

### § 760.3 Indemnity payments on milk.

An indemnity payment for milk may be made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of his normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less (a) any amount he received for whole milk marketed during the applications period, and (b) any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

### § 760.4 Normal marketings of milk.

(a) The county committee shall determine the affected farmer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk which such farmer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his whole milk from the commercial market because of the detection of a residue of a violating substance.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period shall be reduced so that they represent only that part of such pay period which is within the application period.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979]

### § 760.5 Fair market value of milk.

(a) The county committee shall determine the fair market value of the affected farmer's normal marketings, which, for the purposes of this subpart, shall be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period.

(b) The county committee shall determine the net proceeds the affected farmer would have received in each of the pay periods in the application period (1) in the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundred-weight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the county committee shall deduct from the gross price therefor any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

### §760.6 Information to be furnished.

The affected farmer shall furnish to the county committee complete and accurate information sufficient to enable the county committee or the Deputy Administrator to make the determinations required in this subpart. Such information shall include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the removal of the affected farmer's whole milk from the commercial market.

(b) The specific name of the violating substance causing the removal of his whole milk from the commercial market, if not included in the notice or other evidence of action furnished under paragraph (a) of this section.

(c) The quantity and butterfat test of whole milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk handler or any other evidence the county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(d) The average number of cows milked during the base period and during each pay period in the application.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of removal of his whole milk from the market, the average price stated by the milk handler shall be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer shall furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and remove from the commercial market.

(h) To the extent that such information is available to the affected farmer, the name of any pesticide, chemical, or toxic substance used on the farm within 24 months prior to the application period, the use made of the pesticide, chemical, or toxic substance, the approximate date of such use, and the name of the manufacturer and the registration number, if any, on the label on the container of the pesticide, chemical, or toxic substance.

(i) To the extent possible, the source of the pesticide, chemical, or toxic substance that caused the contamination of the whole milk, and the results of any laboratory tests on the feed supply.

(j) Such other information as the county committee may request to enable the county committee or the Deputy Administrator to make the determinations required in this subpart.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, June 22, 1979]

### §760.7 Other requirements for affected farmers.

An indemnity payment for milk may be made under this subpart to an affected farmer only under the following conditions:

(a) If the pesticide, chemical, or toxic substance, contaminating the milk was used by the affected farmer, he established each of the following:

(1) That the pesticide, chemical or toxic substance, when used, was registered (if applicable) and approved for use as provided in §760.2(f);

(2) That the contamination of his milk was not the result of his failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label;

(3) That the contamination of his milk was not otherwise his fault.

(b) If the pesticide, chemical, or toxic substance contaminating the milk was not used by the affected farmer, he establishes each of the following:

(1) He did not know or have reason to believe that any feed which he purchased and which contaminated his milk contained a harmful residue of a pesticide, a chemical, or a toxic substance or was contaminated by nuclear radiation or fallout.

(2) None of the milk was produced by dairy cattle which he knew, or had reason to know at the time he acquired them, were contaminated with residues of pesticides, chemicals or toxic substances, or by nuclear radiation or fallout.

(3) The contamination of his milk was not otherwise his fault.

(c) The affected farmer has adopted recommended practices for eliminating residues of pesticides, chemicals, or toxic substances or contamination from nuclear radiation or fallout from his milk as soon as practicable following the discovery of the initial contamination.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

### § 760.8 Application for payments for milk.

The affected farmer or his legal representative, as provided in §§ 760.25 and 760.29, must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county FSA office for the county where the farm headquarters are located no later than December 31 following the end of the fiscal year in which the loss occurred, or such later date as the Deputy Administrator may specify. The application for payment shall cover application periods of at least 28 days, except that, if the entire application period, or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period. The application for payment shall be accompanied by the information required by § 760.6 as well as any other information which will enable the county committee to determine whether the making of an indemnity payment is precluded for any of the reasons set forth in § 760.7. Such information shall be submitted on forms approved for the purpose by the Deputy Administrator.

[43 FR 10535, Mar. 14, 1978, as amended at 51 FR 12986, Apr. 17, 1986; 52 FR 17935, May 13, 1987]

### § 760.9 Other legal recourse.

(a) No indemnity payment shall be made for contaminated milk resulting from residues of chemicals or toxic substances if, within 30 days after receiving a complete application, the Deputy Administrator determines that other legal recouse is available to the farmer. An application shall not be deemed complete unless it contains all information necessary to make a determination as to whether other legal recourse is available to the farmer. However, notwithstanding such a determination, the Deputy Administrator may reopen the case at a later date and make a new determination on the merits of the case as may be just and equitable.

(b) In the event that a farmer receives an indemnity payment under this subpart, and such farmer is later compensated for the same loss by the person (or the representative or successor in interest of such person) responsible for such loss, the indemnity payment shall be refunded by the farmer to the Department of Agriculture: *Provided,* That the amount of such refund shall not exceed the amount of other compensation received by the farmer.

[Amdt. 1, 44 FR 36361, June 22, 1979]

## PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

### § 760.20 Payments to manufacturers of dairy products.

An indemnity payment may be made to the affected manufacturer who is determined by the Deputy Administrator to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of the product removed from the commercial market because of pesticide residues, less any amount the manufacturer receives for the product in the form of salvage.

NOTE: Manufacturers are not eligible for payment when dairy products are contaminated by chemicals, toxic substances (other

than pesticides) or nuclear radiation or fallout.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

### § 760.21 Application for payments by manufacturers.

The affected manufacturer, or his legal representatives, shall file an application for payment with the Deputy Administrator, FSA, Washington, D.C., through the county office serving the county where the contaminated product is located. The application for payment may be in the form of a letter or memorandum. Such letter or memorandum, however, must be accompanied by acceptable documentation to support such application for payment.

### § 760.22 Information to be furnished by manufacturer.

The affected manufacturer shall furnish the Deputy Administrator, through the county committee, complete and accurate information sufficient to enable him to make the determination as to the manufacturer's eligibility to receive an indemnity payment. Such information shall include, but is not limited to:

(a) A copy of the notice or other evidence of action by the public agency which resulted in the product being removed from the commerical market.

(b) The name of the pesticide causing the removal of the product from the commerical market and, to the extent possible, the source of the pesticide.

(c) A record of the quantity of milk or butterfat used to produce the product for which an indemnity payment is requested.

(d) The identity of any pesticide used by the affected manufacturer.

(e) Such other information as the Deputy Administrator may request to enable him to make the determinations required in this subpart.

### § 760.23 Other requirements for manufacturers.

An indemnity payment may be made under this subpart to an affected manufacturer only under the following conditions:

(a) If the pesticide contaminating the product was used by the affected manufacturer, he establishes each of the following: (1) That the pesticide, when used, was registered and recommended for such use as provided in § 760.2(f); (2) that the contamination of his product was not the result of his failure to use the pesticide in accordance with the directions and limitations stated on the label of the pesticide; and (3) that the contamination of his product was not otherwise his fault.

(b) If the pesticide contaminating the product was not used by the affected manufacturer: (1) He did not know or have reason to believe that the milk from which the product was processed contained a harmful level of pesticide residue, and (2) the contamination of his product was not otherwise his fault.

(c) In the event that a manufacturer receives an indemnity payment under this subpart, and such manufacturer is later compensated for the same loss by the person (or the representative or successor in interest of such person) responsible for such loss, the indemnity payment shall be refunded by the manufacturer to the Department of Agriculture: *Provided*, That the amount of such refund shall not exceed the amount of other compensation received by the manufacturer.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982; 51 FR 12987, Apr. 17, 1986; 52 FR 17935, May 13, 1987]

## GENERAL PROVISIONS

### § 760.24 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county 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 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 the Deputy Administrator or his 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.

### § 760.25 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor shall be eligible for indemnity payments only if he meets one of the following requirements:

(1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed 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 he been an adult.

(2) [Reserved]

### § 760.26 Appeals.

The appeal regulations issued by the Administrator, FSA, part 780 of this chapter, shall be applicable to appeals by dairy farmers or manufacturers from determinations made pursuant to the regulations in this subpart.

### § 760.27 Setoffs.

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, indemnity payments due the affected farmer or manufacturer under the regulations in this part shall be applied, as provided in the Secretary's setoff regulations, part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the affected farmer or manufacturer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

### § 760.28 Overdisbursement.

If the indemnity payment disbursed to an affected farmer or to a manufacturer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer shall be personally liable for repayment of the amount of such excess.

### § 760.29 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected farmer or manufacturer who would otherwise receive an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in part 707 of this chapter. The person requesting such payment shall file Form FSA–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent,'' as provided in that part.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

### § 760.30 Records and inspection thereof.

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the county committee for the purpose of enabling such farmer to receive a milk indemnity payment under this subpart, shall maintain any existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to

inspect, examine, and make copies of such books, records, and accounts.

(b) The affected manufacturer or any other person who furnishes information to the Deputy Administrator for the purposes of enabling such manufacturer to receive an indemnity payment under this subpart shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected manufacturer or any other person who furnishes such information to the Deputy Administrator shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

### § 760.31 Assignment.

No assignment shall be made of any indemnity payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart shall be null and void.

### § 760.32 Instructions and forms.

The Deputy Administrator shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Affected farmers and manufacturers may obtain information necessary to make application for a dairy indemnity payment from the county FSA office. Form FSA–373—Application for Indemnity Payment, is available at the county ASC office.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

### § 760.33 Availability of funds.

Payment of indemnity claims will be contingent upon the availability of funds to the Department to pay such claims. With respect to claims filed after October 1, 1982, if the Department determines that the amount of claims to be filed under the program will exceed the funds available to the Department, to pay such claims payments will be made so that each eligible claimant will receive a pro rata share of the remaining funds available to the Department to pay dairy indemnity claims.

(Approved by the Office of Management and Budget under control number 0560–0045)

[48 FR 40367, Sept. 7, 1983 and 49 FR 8906, Mar. 9, 1984]

### § 760.34 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 760) 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 0560–0045.

[49 FR 29564, July 23, 1984]

## Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

### § 760.101 Eligible counties, hurricanes and disaster periods.

Producers who have suffered certain losses due to 2005 Hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma (2005 hurricanes) in the following counties (eligible counties) are eligible to enroll in the programs made available under subparts B through F of this part. The 'Disaster Period' is the time period in which losses occurred that would be considered eligible for the programs under subparts B through F of this part. Funds for the programs in subparts B through G are made available under Section 32 of the Act of August 24, 1935, as amended (Section 32).

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Alabama | Autauga | 7/10/05–9/8/05 | | | | |
| Alabama | Baldwin | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Bibb | | 8/29/05–10/28/05 | | | |
| Alabama | Butler | 7/10/05–9/8/05 | | | | |
| Alabama | Chambers | 7/10/05–9/8/05 | | | | |
| Alabama | Choctaw | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Clarke | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Clay | 7/10/05–9/8/05 | | | | |
| Alabama | Cleburne | 7/10/05–9/8/05 | | | | |
| Alabama | Coffee | 7/10/05–9/8/05 | | | | |
| Alabama | Colbert | | 8/29/05–10/28/05 | | | |
| Alabama | Conecuh | 7/10/05–9/8/05 | | | | |
| Alabama | Covington | 7/10/05–9/8/05 | | | | |
| Alabama | Crenshaw | 7/10/05–9/8/05 | | | | |
| Alabama | Cullman | | 8/29/05–10/28/05 | | | |
| Alabama | Dallas | 7/10/05–9/8/05 | | | | |
| Alabama | Escambia | 7/10/05–9/8/05 | | | | |
| Alabama | Geneva | 7/10/05–9/8/05 | | | | |
| Alabama | Greene | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Hale | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Henry | 7/10/05–9/8/05 | | | | |
| Alabama | Houston | 7/10/05–9/8/05 | | | | |
| Alabama | Jefferson | | 8/29/05–10/28/05 | | | |
| Alabama | Lamar | | 8/29/05–10/28/05 | | | |
| Alabama | Lauderdale | | 8/29/05–10/28/05 | | | |
| Alabama | Lowndes | 7/10/05–9/8/05 | | | | |
| Alabama | Macon | 7/10/05–9/8/05 | | | | |
| Alabama | Marengo | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Marion | | 8/29/05–10/28/05 | | | |
| Alabama | Mobile | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Monroe | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Perry | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Pickens | | 8/29/05–10/28/05 | | | |
| Alabama | Pike | 7/10/05–9/8/05 | | | | |
| Alabama | Randolph | 7/10/05–9/8/05 | | | | |
| Alabama | Sumter | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Tuscaloosa | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Washington | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Wilcox | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Winston | | 8/29/05–10/28/05 | | | |
| Florida | Bay | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Brevard | | | | | 10/23/05–12/22/05 |
| Florida | Broward | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Calhoun | 7/10/05–9/8/05 | | | | |
| Florida | Charlotte | | | | | 10/23/05–12/22/05 |
| Florida | Collier | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Florida | Dixie | 7/10/05–9/8/05 | | | | |
| Florida | Escambia | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Franklin | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Gadsden | 7/10/05–9/8/05 | | | | |
| Florida | Glades | | | | | 10/23/05–12/22/05 |
| Florida | Gulf | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Hardee | | | | | 10/23/05–12/22/05 |
| Florida | Hendry | | | | | 10/23/05–12/22/05 |
| Florida | Highlands | | | | | 10/23/05–12/22/05 |
| Florida | Holmes | 7/10/05–9/8/05 | | | | |
| Florida | Indian River | | | | | 10/23/05–12/22/05 |
| Florida | Jackson | 7/10/05–9/8/05 | | | | |
| Florida | Jefferson | 7/10/05–9/8/05 | | | | |
| Florida | Lee | | | | | 10/23/05–12/22/05 |
| Florida | Leon | 7/10/05–9/8/05 | | | | |
| Florida | Levy | 7/10/05–9/8/05 | | | | |
| Florida | Liberty | 7/10/05–9/8/05 | | | | |
| Florida | Martin | | | | | 10/23/05–12/22/05 |
| Florida | Miami-Dade | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Monroe | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Okaloosa | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Okeechobee | | | | | 10/23/05–12/22/05 |
| Florida | Palm Beach | | | | | 10/23/05–12/22/05 |
| Florida | St. Lucie | | | | | 10/23/05–12/22/05 |
| Florida | Santa Rosa | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Sarasota | | | | | 10/23/05–12/22/05 |
| Florida | Taylor | 7/10/05–9/8/05 | | | | |
| Florida | Wakulla | 7/10/05–9/8/05 | | | | |
| Florida | Walton | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Washington | 7/10/05–9/8/05 | | | | |
| Louisiana | Acadia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Allen | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Ascension | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Assumption | | 8/29/05–10/28/05 | | | |
| Louisiana | Avoyelles | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Beauregard | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Bienville | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Bossier | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Caddo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Calcasieu | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Caldwell | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Cameron | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Catahoula | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Claiborne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Concordia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | De Soto | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | East Baton Rouge | | 8/29/05–10/28/05 | | | |
| Louisiana | East Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | East Feliciana | | 8/29/05–10/28/05 | | | |
| Louisiana | Evangeline | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Louisiana | Franklin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Grant | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Iberia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Iberville | | 8/29/05–10/28/05 | | | |
| Louisiana | Jackson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Jefferson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Jefferson Davis | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lafayette | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lafourche | | 8/29/05–10/28/05 | | | |
| Louisiana | La Salle | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lincoln | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Livingston | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Madison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Morehouse | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Natchitoches | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Orleans | | 8/29/05–10/28/05 | | | |
| Louisiana | Ouachita | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Plaquemines | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Pointe Coupee | | 8/29/05–10/28/05 | | | |
| Louisiana | Rapides | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Red River | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Richland | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Sabine | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Bernard | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Charles | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Helena | | 8/29/05–10/28/05 | | | |
| Louisiana | St. James | | 8/29/05–10/28/05 | | | |
| Louisiana | St. John the Baptist | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Landry | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Martin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Mary | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Tammany | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Tangipahoa | | 8/29/05–10/28/05 | | | |
| Louisiana | Tensas | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Terrebonne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Union | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Vermilion | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Vernon | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Washington | | 8/29/05–10/28/05 | | | |
| Louisiana | Webster | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Baton Rouge | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Feliciana | | 8/29/05–10/28/05 | | | |
| Louisiana | Winn | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Adams | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Alcorn | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Mississippi | Amite | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Attala | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Benton | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Bolivar | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Calhoun | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Chickasaw | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Choctaw | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Claiborne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Clarke | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Clay | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Coahoma | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Copiah | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Covington | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | De Soto | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Forrest | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Franklin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | George | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Greene | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Grenada | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Hancock | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Harrison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Hinds | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Holmes | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Humphreys | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Issaquena | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Itawamba | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jackson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jasper | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jefferson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jefferson Davis | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jones | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Kemper | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lafayette | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lamar | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lauderdale | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lawrence | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Leake | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lee | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Leflore | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lincoln | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lowndes | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Madison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Marion | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Marshall | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Monroe | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Montgomery | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Neshoba | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Newton | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Noxubee | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Mississippi | Oktibbeha | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Panola | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pearl River | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Perry | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pike | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pontotoc | | 8/29/05–10/28/05 | | | |
| Mississippi | Prentiss | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Quitman | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Rankin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Scott | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Sharkey | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Simpson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Smith | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Stone | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Sunflower | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tallahatchie | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tate | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tippah | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tishomingo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tunica | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Union | | 8/29/05–10/28/05 | | | |
| Mississippi | Walthall | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Warren | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Washington | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Wayne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Webster | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Wilkinson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Winston | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Yalobusha | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Yazoo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| North Carolina | Brunswick | | | 9/11/05–11/10/05 | | |
| North Carolina | Carteret | | | 9/11/05–11/10/05 | | |
| North Carolina | Craven | | | 9/11/05–11/10/05 | | |
| North Carolina | Dare | | | 9/11/05–11/10/05 | | |
| North Carolina | Hyde | | | 9/11/05–11/10/05 | | |
| North Carolina | Jones | | | 9/11/05–11/10/05 | | |
| North Carolina | New Hanover | | | 9/11/05–11/10/05 | | |
| North Carolina | Onslow | | | 9/11/05–11/10/05 | | |
| North Carolina | Pamlico | | | 9/11/05–11/10/05 | | |
| North Carolina | Pender | | | 9/11/05–11/10/05 | | |
| Texas | Angelina | | | | 9/23/05–11/22/05 | |
| Texas | Brazoria | | | | 9/23/05–11/22/05 | |
| Texas | Chambers | | | | 9/23/05–11/22/05 | |
| Texas | Cherokee | | | | 9/23/05–11/22/05 | |
| Texas | Fort Bend | | | | 9/23/05–11/22/05 | |
| Texas | Galveston | | | | 9/23/05–11/22/05 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Texas | Gregg | | | | 9/23/05–11/22/05 | |
| Texas | Hardin | | | | 9/23/05–11/22/05 | |
| Texas | Harris | | | | 9/23/05–11/22/05 | |
| Texas | Harrison | | | | 9/23/05–11/22/05 | |
| Texas | Houston | | | | 9/23/05–11/22/05 | |
| Texas | Jasper | | | | 9/23/05–11/22/05 | |
| Texas | Jefferson | | | | 9/23/05–11/22/05 | |
| Texas | Liberty | | | | 9/23/05–11/22/05 | |
| Texas | Marion | | | | 9/23/05–11/22/05 | |
| Texas | Montgomery | | | | 9/23/05–11/22/05 | |
| Texas | Nacogdoches | | | | 9/23/05–11/22/05 | |
| Texas | Newton | | | | 9/23/05–11/22/05 | |
| Texas | Orange | | | | 9/23/05–11/22/05 | |
| Texas | Panola | | | | 9/23/05–11/22/05 | |
| Texas | Polk | | | | 9/23/05–11/22/05 | |
| Texas | Rusk | | | | 9/23/05–11/22/05 | |
| Texas | Sabine | | | | 9/23/05–11/22/05 | |
| Texas | San Augustine | | | | 9/23/05–11/22/05 | |
| Texas | San Jacinto | | | | 9/23/05–11/22/05 | |
| Texas | Shelby | | | | 9/23/05–11/22/05 | |
| Texas | Trinity | | | | 9/23/05–11/22/05 | |
| Texas | Tyler | | | | 9/23/05–11/22/05 | |
| Texas | Walker | | | | 9/23/05–11/22/05 | |

**§ 760.102 Applicability.**

(a) This part establishes the terms and conditions under which the following programs will be administered with respect to producers affected by 2005 hurricanes in eligible counties:

(1) Hurricane Indemnity Program (HIP);

(2) Feed Indemnity Program (FIP);

(3) Livestock Indemnity Program (LIP);

(4) Tree Indemnity Program (TIP); and

(5) Aquaculture grants to States.

(b) The amount that may be expended for payments under subparts B through G of this part shall not exceed the amount of Section 32 funds made available by the Secretary for the administration of these programs.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through G of this part and, in the case of State grants, by the State.

**§ 760.103 Administration of HIP, FIP, LIP, and TIP.**

(a) These programs are administered under the general supervision of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through F of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through F of this part that the county FSA 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 subparts B through F of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with subparts B through F of this part.

(d) No provision or delegation to a State or county FSA committee shall preclude the Administrator, FSA, Deputy Administrator for Farm Programs, FSA or a designee or other such person, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

**§ 760.104 Definitions.**

The following definitions in this section apply to the programs in subparts B through G of this part. The terms defined in part 718 of this chapter and parts 1400 and 1437 of this title shall also be applicable, except where they conflict with the definitions set forth in this section.

*Application* means the '2005 Hurricane Disaster Programs Application' form issued by FSA.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*Bush* means a thick densely branched woody shrub grown for the production of an annual crop for commercial market for human consumption.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

*Crop insurance* means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

*Farming operation* means a business enterprise engaged in the production of agricultural products.

*Fruit tree* means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

*Owner* means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being requested under subparts B through F, on the day such plant or livestock perished or suffered losses due to an eligible hurricane as set forth § 760.101.

*Stand* means a contiguous acreage of the same crop of trees, bushes, or vines, and excludes container-grown crops.

*Tier* means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

*Vine* means a plant from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, that has a flexible stem supported by climbing, twining, or creeping along a surface.

### § 760.105 Application for payment.

(a) A producer who applies for any program under subparts B through F shall file an application and any required supporting documentation in the county FSA office serving the county where the eligible loss occurred; or in the case of FIP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period announced by FSA.

(c) Payments may be made for eligible losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or 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 a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

### § 760.106 Limitations on payments and other benefits.

(a) Separate payment limitations apply to HIP, FIP, LIP, and TIP. No 'person' as determined under part 1400 of this title shall receive more than $80,000 under each of these programs.

(b) An individual or entity whose adjusted gross income is in excess of $2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part for HIP, FIP, LIP, and TIP; except that the individual or entity may be considered to meet the adjusted gross income requirement if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop year is derived from farming or ranching operations.

(c) As a condition to receive benefits under subparts B through F, a producer must have been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(d) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under subparts B through F of this part.

### § 760.107 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through F of this part.

### § 760.108 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, 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 792 of this chapter apply to payments

made under subparts B through F of this part.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

### § 760.109 Records and inspection thereof.

Producers receiving payments under the programs in subparts B through F or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through F of this part shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to FSA shall permit authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

### § 760.110 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through F of this part, and if any refund of a payment to FSA shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

### § 760.111 Paperwork Reduction Act assigned number.

The information collection required to support the regulations of subparts B through F of this part has been approved by OMB and assigned OMB control number 0560–0257.

## Subpart C—Hurricane Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

### § 760.201 Applicability.

This subpart sets forth the terms and conditions applicable to the Hurricane Indemnity Program (HIP). Benefits will be provided under this subpart to producers who have received a crop insurance indemnity from the Risk Management Agency (RMA) based on the associated loss criteria set forth in § 760.202(a)(1) as provided to FSA by RMA; and to producers who have received Noninsured Crop Disaster Assistance Program (NAP) payments under part 1437 of this title based on the provisions of § 760.202(a)(1). HIP benefits will be provided under this subpart to eligible producers who suffered losses due to 2005 hurricanes as set forth in § 760.101.

### § 760.202 Producer eligibility.

A producer who applies for benefits under this subpart will be eligible to receive a payment if both of the following apply:

(a) The producer received a crop insurance indemnity from RMA or a NAP payment under part 1437 of this title for crop losses:

(1) In an eligible county;

(2) Recorded by RMA or FSA as being due to a 2005 hurricane and the loss occurred during a disaster period as set forth in § 760.101; and

(3) Were due to any of the following causes of loss:

(i) Excessive moisture, precipitation, and/or rain;

(ii) Flood;

(iii) Excessive wind;

(iv) Cyclone;

(v) Tornado;

(vi) Tropical depression;

(vii) Storm surge; or

(viii) Salinity due to salt water intrusion; and

(b) An application is filed in accordance with § 760.105.

### § 760.203 Payment calculation.

The disaster benefits under this subpart will be equal to the smaller of:

(a) 30 percent of the RMA crop insurance indemnity or 30 percent of the NAP payment for eligible crop losses as provided in § 760.202(a)(1), and adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1); or

(b) 95 percent of the expected value of the crop in the absence of a disaster, as determined by RMA for insured crops, using information from the crop policy; and by FSA for NAP crops, using the producer's price and yield, minus the following:

(1) The value of the production as counted by RMA for insured crops to establish the indemnity and by FSA for NAP crops to establish the NAP payment;

(2) The crop's eligible indemnity or NAP payment for eligible crop losses determined in accordance with § 760.202(a)(1); and

(3) Adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1).

## Subpart D—Feed Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

### § 760.301 Applicability.

This subpart sets forth the terms and conditions applicable to the Feed Indemnity Program (FIP). FIP benefits will be provided under this subpart to eligible owners and cash lessees, but not both, for the same livestock, for feed losses or increased feed costs that occurred in eligible counties during the disaster period as set forth in § 760.101.

### § 760.302 Definitions.

The following definitions are applicable for all purposes of administering FIP.

*Adult beef bulls* means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult beef cows* means female bovine animals that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo bulls* means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo cows* means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy bulls* means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy cows* means female bovine animals used for the purpose of providing milk for human consumption, that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Goats* means domesticated, ruminant mammals of the genus Capra, including Angora goats.

*Horses* means domesticated horses, and does not include donkeys, mules or other large solid-hoofed herbivorous mammals.

*Non-adult beef cattle* means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition of adult beef cows or bulls.

*Non-adult buffalo/beefalo* means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition adult dairy cows or bulls.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis.*

### § 760.303 Eligible livestock and producers.

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, horses, sheep, goats or deer as defined in § 760.302;

(2) Been physically located in an eligible county on the beginning date of the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the applicable disaster period as set forth in § 760.101;

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the applicable disaster period as provided in § 760.101; and

(2) Suffered a feed loss or an increased feed cost during the applicable disaster period as set forth in § 760.101 with respect to feed used for the eligible livestock.

### § 760.304 Application process.

(a) Applicants must submit to FSA a completed application in accordance with § 760.105, and any other supporting documentation as determined by FSA to be necessary to make a determination of the eligibility of the applicant. Supporting documents include but are not limited to: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; Internal Revenue Service (IRS) records; property tax records; private insurance documents; and other similar documents.

### § 760.305 Payment calculation.

(a) FIP payments are calculated by multiplying the national payment rate for each of the following livestock categories by the number of eligible livestock in each category. The payment rate represents the cost of the amount of corn needed to maintain 1 animal unit for a specified period of time.

(b) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Horses; and

(10) Deer.

## Subpart E—Livestock Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

### § 760.401 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program (LIP). Benefits will be provided under this subpart to eligible livestock owners and contract growers, but not both for the same livestock loss, for certain livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.405 for eligible livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

**§ 760.402 Definitions.**

The following definitions are applicable for all purposes of administering LIP.

*Adult beef bull* means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

*Adult beef cow* means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

*Buck* means a male goat.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

*Doe* means a female goat.

*Equine animal* means a domesticated horse, mule or donkey.

*Ewe* means a female sheep.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Non-adult beef cattle* means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. *Non-adult beef cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Non-adult buffalo or beefalo* means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. *Non-adult buffalo or beefalo* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. *Non-adult dairy cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Poultry* means domesticated chickens, turkeys, ducks and geese. *Poultry* will be further delineated by sex, age and purpose of production, as determined by FSA.

*Ram* means a male sheep.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis*. *Sheep* will be further delineated by sex (rams and ewes) and age (lambs).

*Swine* means domesticated omnivorous pigs, hogs, and boars. *Swine* will be further delineated by sex and weight as determined by FSA.

**§ 760.403 Eligible owners, contract growers and livestock.**

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the livestock that died.

(c) To be considered eligible, livestock must meet all the following:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, sheep, goats, swine, poultry or deer.

(2) Died as a direct result of an applicable disaster, in an eligible county and during the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the day they died; and before dying;

(4) Not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

**§ 760.404 Application process.**

(a) Applicants must submit to FSA a completed application in accordance with § 760.105 and other supporting documents as determined by FSA to be necessary for making determinations of the eligibility of the applicant. Supporting documents must show: evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred during the applicable disaster period, and the death was a direct result of the occurrence of a 2005 hurricane as provided in § 760.101. The quantity and kind of livestock that died as a direct result of the applicable disaster may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; IRS records; property tax records; private insurance documents; and any other similar documents.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category as determined by the Deputy Administrator, in inventory at the time the applicable disaster occurred;

(iii) Other details necessary for FSA to determine the certification acceptable; and

(2) The third party has provided to FSA their telephone number and address, and a statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation to the livestock owner or contract grower; and

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower; and

(iv) Other details necessary for FSA to determine the certification acceptable.

**§ 760.405 Payment calculation.**

(a) Under LIP, separate payment rates are established for eligible livestock owners and eligible contract growers in accordance with paragraphs (b) and (c) of this section. LIP payments are calculated by multiplying the national payment rate, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraph (d) of this section. The payment calculated for an eligible contract grower for an eligible livestock category shall be reduced by the amount of any compensation received from the contractor for the loss of income from the dead livestock.

(b) The LIP payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the livestock.

(c) The LIP payment rates for eligible contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The categories of eligible livestock are as follows:

(1) Adult beef cows;

(2) Adult beef bulls;

(3) Non-adult beef cattle;

(4) Adult buffalo or beefalo cows;

(5) Adult buffalo or beefalo bulls;

(6) Non-adult buffalo/beefalo;

(7) Adult dairy cows;

(8) Adult dairy bulls;

(9) Non-adult dairy cattle;

(10) Swine, sows, boars, barrows, gilts over 150 pounds;

(11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(12) Swine, feeder pigs under 50 pounds;
(13) Goats, bucks;
(14) Goats, does;
(15) Goats, kids;
(16) Sheep, rams;
(17) Sheep, ewes;
(18) Sheep, lambs;
(19) Deer;
(20) Chickens, layers, roasters;
(21) Chickens, broilers, pullets;
(22) Chickens, chicks;
(23) Turkeys, toms, fryers, roasters;
(24) Turkeys, poults;
(25) Ducks;
(26) Ducks, ducklings;
(27) Geese, goose;
(28) Geese, gosling; and
(29) Equine.

## Subpart F—Tree Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

### § 760.501 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Tree Indemnity Program (TIP). Benefits will be provided under this subpart for eligible fruit trees, bushes, and vines that were lost or damaged during the disaster period as set forth in § 760.101.

(b) Compensation will be based on expenses incurred for replanting, rehabilitation, cleanup, and debris removal.

(c) No benefits shall be provided when the loss:

(1) Occurred in any county other than an eligible county, or

(2) Was not the result of an eligible disaster as set forth in § 760.101.

### § 760.502 Eligible producers and stands.

(a) An eligible fruit tree, bush, and/or vine producer is one who bears financial responsibility and who has incurred costs of at least $90 per acre for replanting, rehabilitation, cleanup, or debris removal, excluding crop production.

(b) An eligible stand must:

(1) Be physically located in an eligible county;

(2) Have been impacted during a 2005 hurricane as set forth in § 760.101; and

(3) Be grown for commercial use.

### § 760.503 Application process.

(a) Applicants must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed fruit trees, bushes, and vines in accordance with part 718 of this chapter, and any other supporting documentation for FSA to determine the eligibility of the applicant.

(b) Applicants must certify and provide adequate proof that the expenses incurred to eligible fruit trees, bushes, or vines occurred during the applicable disaster period and that the loss or damage was a direct result of a 2005 hurricane, as set forth in § 760.101.

(c) The quantity and kind of fruit trees, bushes, or vines that died or were damaged as a result of the applicable disaster may be documented by; purchase records; bank or other loan documents; Federal Emergency Management Agency and National Guard records; IRS records; property tax records; private insurance documents; and similar documents.

### § 760.504 Payment calculation.

(a) TIP payments shall be calculated by multiplying the following national payment rate for the applicable tier by the number of eligible acres, excluding but not limited to such things as drainage ditches and canals, in a stand of fruit trees, bushes, or vines by the producer's share in such crop:

(1) Tier I—$750;

(2) Tier II—$300;

(3) Tier III—$200; and

(4) Tier IV—$90.

(b) If the actual expenses incurred for damage are greater than the value associated with the tier based on the location of the stand, the applicant may submit documentation to FSA to request the stand be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the expenses incurred the stand can only be placed in the next lower-numbered tier.

## Subpart G—Aquaculture Program

### § 760.601 Funds availability.

FSA will provide block grants to the states of Alabama, Florida, Louisiana, Mississippi, North Carolina and Texas where aquaculture was adversely affected by 2005 hurricanes as set forth in § 760.101. Producers in eligible counties in those states who raise aquaculture species in a controlled environment as part of a farming operation and who have not received assistance under other disaster programs for the same aquaculture losses are eligible to receive these funds. Funds provided by a State to a farming operation under such a grant shall not exceed $80,000.

[72 FR 878, Jan. 9, 2007]

## Subpart H—2006 Livestock Assistance Grant Program

### § 760.701 Funds availability.

FSA will administer a limited program to provide assistance to livestock producers where forage was adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. The amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Producers in eligible counties in those States who suffered forage losses as part of a farming operation are eligible for assistance under these grants. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed $10,000, except for general partnerships and joint ventures in which case assistance shall not exceed $10,000 times the number of members that constitute the general partnership or joint venture.

[72 FR 878, Jan. 9, 2007]

## Subpart I—2005–2007 Crop Disaster Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

### § 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

### § 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee will take any action required by this part that has not been taken by a county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by that FSA county committee that is not in accordance with this part; and

(2) Require a county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs 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 may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

**§ 760.802 Definitions.**

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Actual production* means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

*Administrative fee* means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

*Affected production* means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

*Appraised production* means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

*Approved yield* means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to FSA prior to May 25, 2007 will be used for purposes of the 2005–2007 CDP.

*Aquaculture* means a value loss crop for the reproduction and rearing of aquatic species in controlled or selected environments including, but not limited to, ocean ranching, except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law.

*Aquaculture facility* means any land or structure including, but not limited to, a laboratory, concrete pond, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

*Aquaculture species* means any aquaculture species as defined in part 1437 of this title.

*Average market price* means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses. Average market prices are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly, the established average market prices are not appealable under parts 11 or 780 of this title.

*Catastrophic risk protection* means the minimum level of coverage offered by FCIC.

*CCC* means the Commodity Credit Corporation.

*Controlled environment* means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including, but not limited to, water, soil, or nutrients) by the producer, is in fact controlled by the producer.

*Crop insurance* means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended.

*Crop year* means:

(1) For insured crops, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP covered crops, as provided in part 1437 of this title.

*Damaging weather* means drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or any combination. It also includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as crop disease, and insect infestation.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or designee.

*Eligible crop* means a crop insured by FCIC as defined in part 400 of this title, or included under NAP as defined under part 1437 of this title for which insurance or NAP coverage was obtained timely for the year which CDP benefits are sought.

*End use* means the purpose for which the harvested crop is used, such as grain, hay, or seed.

*Expected production* means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

*Final planting date* means the latest date, established by the Risk Management Agency (RMA) for insured crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP covered crops, the final planting date is as provided in part 1437 of this title.

*Flood prevention* means:

(1) For aquaculture species, placing the aquaculture facility in an area not prone to flood;

(2) In the case of raceways, devices or structures designed for the control of water level; and

(3) With respect to nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder, or sand base.

*Good nursery growing practices* means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

*Ground water* means aqueous supply existing in an aquifer subsurface that is brought to the surface and made available for irrigation by mechanical means such as by pumps and irrigation wells.

*Growing media* means:

(1) For aquaculture species, media that provides nutrients necessary for the production of the aquaculture species and protects the aquaculture species from harmful species or chemicals or

(2) For nursery crops, a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced designed to prevent ''root rot.''

*Harvested* means:

(1) For insured crops, harvested as defined according to the applicable crop insurance policy;

(2) For NAP covered single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For NAP covered crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP covered crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested factor applied.

*Historic yield* means, for a unit, the higher of the county average yield or the participant's approved yield.

(1) An insured participant's yield will be the higher of the county average yield listed or the approved federal crop insurance APH, for the disaster year.

(2) NAP participant's yield will be the higher of the county average or approved NAP APH for the disaster year.

*Insurable crop* means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

*Marketing contract* means a legally binding written contract between a purchaser and grower for the purpose of marketing a crop.

*Market value* means:

(1) The price(s) designated in the marketing contract; or

(2) If not designated in a marketing contract, the rate established for quantity payments under §760.811.

*Maximum average loss level* means the maximum average level of crop loss to be attributed to a participant without acceptable production records (verifiable or reliable). Loss levels are expressed in either a percent of loss or yield per acre, and are intended to reflect the amount of production that a participant would have been expected to make if not for the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

*Multi-use crop* means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

*Multiple cropping* means the planting of two or more different crops on the same acreage for harvest within the same crop year.

*Multiple planting* means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

*NASS* means the National Agricultural Statistics Service.

*Net crop insurance indemnity* means the indemnity minus the producer paid premium.

*NAP covered* means a crop for which the participants obtained assistance under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

*Normal mortality* means the percentage of dead aquaculture species that would normally occur during the crop year.

*Person* means person as defined in part 1400 of this title, and all rules with respect to the determination of a person found in that part are applicable to this part. However, the determinations made in this part in accordance with part 1400, subpart B, Person Determinations, of this title will also take into account any affiliation with any entity in which an individual or entity has an interest, regardless of whether or not such entities are considered to be actively engaged in farming.

*Planted acreage* means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

*Prevented planting* means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by FSA.

*Production* means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds.

*Rate* means price per unit of the crop or commodity.

*Recording county* means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a producer with farming interests that are administratively located in more than one county, the FSA county office designated by FSA to control the payments received by the producer.

*Related condition* means, with respect to a disaster, a condition that causes deterioration of a crop, such as insect infestation, plant disease, or aflatoxin, that is accelerated or exacerbated as a result of damaging weather, as determined in accordance with instructions issued by the Deputy Administrator.

*Reliable production records* means evidence provided by the participant that

is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee.

*Repeat crop* means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

*RMA* means the Risk Management Agency.

*Salvage value* means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

*Secondary use* means the harvesting of a crop for a use other than the intended use.

*Secondary use value* means the value determined by multiplying the quantity of secondary use times the FSA or CCC-established price for that use.

*State committee* means the FSA State committee.

*Surface irrigation water* means aqueous supply anticipated for irrigation of agricultural crops absent an eligible disaster condition impacting either the aquifer or watershed. Surface irrigation water may result from feral sources or from irrigation districts.

*Tropical crops* has the meaning assigned in part 1437 of this title.

*Tropical region* has the meaning assigned in part 1437 of this title.

*Unharvested factor* means a percentage established for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed. Unharvested factors are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly established unharvested factors are not appealable under parts 11 and 780 of this title.

*Unit* means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 of this title that, for ornamental nursery production, includes all eligible plant species and sizes.

*Unit of measure means:*

(1) For all insured crops, the FCIC-established unit of measure;

(2) For all NAP covered crops, the established unit of measure, if available, used for the 2005, 2006, or 2007 NAP price and yield;

(3) For aquaculture species, a standard unit of measure such as gallons, pounds, inches, or pieces, established by the State committee for all aquaculture species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon;

(6) For honey, pounds; and

(7) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia, and the Marshall Islands.

*USDA* means the United States Department of Agriculture.

*USDA Plant Hardiness Zone* means 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

*Value loss crop* has the meaning assigned in part 1437 of this title.

*Verifiable production record* means:

(1) For quantity losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source; or

(2) For quality losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source including determined quality factors and the specific quantity covered by those factors.

*Yield* means unit of production, measured in bushels, pounds, or other unit

of measure, per area of consideration, usually measured in acres.

**§ 760.803 Eligibility.**

(a) Participants will be eligible to receive disaster benefits under this part only if they incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crops, as further specified in this part, as a result of damaging weather or any related condition. Participants may not receive benefits with respect to volunteer stands of crops.

(b) Payments may be made for losses suffered by an eligible participant who, at the time of application, is a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract for the participant, signs the 2005, 2006, or 2007 Crop Disaster Program application. Participants must provide proof of the authority to sign legal documents for the deceased individual or dissolved entity. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, the Participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the 2005, 2006, or 2007 crop year, as applicable, and must not otherwise be precluded from receiving benefits under parts 12 or 1400 of this title or any law.

**§ 760.804 Time and method of application.**

(a) The 2005, 2006, 2007 Crop Disaster Program application must be submitted on a completed FSA–840, or such other form designated for such application purpose by FSA, in the FSA county office in the participant's control county office before the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a participant, the application for benefits is considered to contain information and certifications of and pertaining to the participant regardless of who entered the information on the application.

(c) The participant requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification by FSA. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility under this program. Furnishing required information is voluntary; however without it, FSA is under no obligation to act on the application or approve benefits. Providing a false certification to the government is punishable by imprisonment, fines, and other penalties.

(d) FSA may require the participant to submit any additional information it deems necessary to implement or determine any eligibility provision of this part. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all of following completed forms:

(1) If Item 16 on FSA–840 is answered ''YES,'' FSA–840M, Crop Disaster Program for Multiple Crop—Same Acreage Certification;

(2) CCC–502, Farm Operating Plan for Payment Eligibility;

(3) CCC–526, Payment Eligibility Average Adjusted Gross Income Certification;

(4) AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(5) FSA–578, Report of Acreage.

(f) Application approval and payment by FSA does not relieve a participant

from having to submit any form required, but not filed, according to paragraph (e) of this section.

### § 760.805 Limitations on payments and other benefits.

(a) A participant may receive benefits for crop losses for only one of the 2005, 2006, or 2007 crop years as specified under this part.

(b) Payments will not be made under this part for grazing losses.

(c) Payments determined to be issued are considered due and payable not later than 60 days after a participant's application is completed with all information necessary for FSA to determine producer eligibility for benefits.

(d) FSA may divide and classify crops based on loss susceptibility, yield, and other factors.

(e) No person, as defined by part 1400 subpart B of this title, may receive more than a total of $80,000 in disaster benefits under this part. In applying the $80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 crop year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(f) No participant may receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by FSA. Accordingly, the sum of the value of the crop not lost, if any; the disaster payment received under this part; and any crop insurance payment or payments received under the NAP for losses to the same crop, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

(g) An individual or entity whose adjusted gross income is in excess of $2.5 million, as defined by and determined under part 1400 subpart G of this title, is not eligible to receive disaster benefits under this part.

(h) Any participant in a county eligible for either of the following programs must complete a duplicate benefits certification. If the participant received a payment authorized by either of the following, the amount of that payment will be reduced from the calculated 2005–2007 CDP payment:

(1) The Hurricane Indemnity Program (subpart B of this part);

(2) The Hurricane Disaster Programs (subparts D, E, F, and G of part 1416 of this title);

(3) The 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program; or

(4) The 2005 Crop Florida Sugarcane Disaster Program.

### § 760.806 Crop eligibility requirements.

(a) A participant on a farm is eligible for assistance under this section with respect to losses to an insurable commodity or NAP if the participant:

(1) In the case of an insurable commodity, obtained a policy or plan of insurance under the Federal Crop Insurance Act for the crop incurring the losses; or

(2) In the case of a NAP covered crop, filed the required paperwork and paid the administrative fee by the applicable filing deadline, for the noninsurable commodity under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 for the crop incurring the losses.

(b) The reasons a participant either elected not to have coverage or did not have coverage mentioned in paragraphs (a)(1) or (2) of this section are not relevant to the determination of the participant's ineligibility under this section. In addition, such reasons for not having crop insurance coverage have no bearing for consideration under part 718, subpart D of this chapter.

### § 760.807 Miscellaneous provisions.

(a) A person is not eligible to receive disaster assistance under this part if it is determined by FSA that the person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a program determination;

(4) Is ineligible under § 1400.5 of this title; or

(5) Does not have entitlement to an ownership share of the crop.

(i) Growers growing eligible crops under contract for crop owners are not eligible unless the grower can be determined to have a share of the crop.

(ii) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for benefits under this part.

(b) A person ineligible under § 1437.15(c) of this title for any year is likewise ineligible for benefits under this part for that year or years.

(c) A person ineligible under § 400.458 of this title for any year is likewise ineligible for benefits under this part for that year or years.

(d) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason.

(e) In the event that any request for assistance or payment under this part resulted from erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement to the producer.

(f) The liability of anyone for any penalty or sanction under or in connection with this part, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(g) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(h) Any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or its proceeds.

(i) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who, as a condition of such waiver, agree to apply the benefits received under this part to reduce the amount of the judgment lien.

(j) Under this program, participants are either eligible or ineligible. Participants in general, do not render performance or need to comply. They either suffered eligible losses or they did not. Accordingly, the provisions of § 718.304 of this chapter do not apply to this part.

**§ 760.808 General provisions.**

(a) For calculations of loss, the participant's existing unit structure will be used as the basis for the calculation established in accordance with:

(1) For insured crops, part 457 of this title; or

(2) For NAP covered crops, part 1437 of this title.

(b) County average yield for loss calculations will be the average of the 2001 through 2005 official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(3) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop was planted beyond the normal planting period for the crop.

(d) The county committee will establish a maximum average loss level that reflects the amount of production producers would have produced if not for the eligible damaging weather or related conditions in the area or county for the same crop. The maximum average loss level for the county will be expressed as either a percent of loss or yield per acre. The maximum average loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(e) Assignment of production or reduction in yield will apply for practices that result in lower yields than those for which the historic yield is based.

### § 760.809 Eligible damaging conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for benefits under this part the loss of the crop, or reduction in quality, or prevented planting must be due to damaging weather or related conditions as defined in § 760.802.

(b) Benefits are not available under this part for any losses in quantity or quality, or prevented planting due to:

(1) Poor farming practices;

(2) Poor management decisions; or

(3) Drifting herbicides.

(c) With the exception of paragraph (d) of this section, in all cases, the eligible damaging condition must have directly impacted the specific crop or crop acreage during its planting or growing period.

(d) If FSA has determined that there has been an eligible loss of surface irrigation water due to drought and such loss of surface irrigation water impacts eligible crop acreage, FSA may approve assistance to the extent permitted by section 760.814.

### § 760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.

(a) To receive benefits under this part, the county committee must determine that because of eligible damaging weather or related condition specifically impacting the crop or crop acreage, the participant with respect to the 2005, 2006, or 2007 crop:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop; or

(3) Sustained a loss in excess of 35 percent of the value for value loss crops.

(b) Qualifying losses under this part do not include losses:

(1) For the 2007 crop, those acres planted, or in the case of prevented planting, would have been planted, on or after February 28, 2007;

(2) That are determined by FSA to be the result of poor management decisions, poor farming practices, or drifting herbicides;

(3) That are the result of the failure of the participant to re-seed or replant the same crop in the county where it is customary to re-seed or replant after a loss;

(4) That are not as a result of a damaging weather or a weather related condition specifically impacting the crop or crop acreage;

(5) To crops not intended for harvest in crop year 2005, 2006, or 2007;

(6) Of by-products resulting from processing or harvesting a crop, such as cottonseed, peanut shells, wheat, or oat straw;

(7) To home gardens;

(8) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

(9) If losses could be attributed to conditions occurring outside of the applicable crop year growing season.

(c) Qualifying losses under this part for nursery stock will not include losses:

(1) For the 2007 crop, that nursery inventory acquired on or after February 28, 2007;

(2) Caused by a failure of power supply or brownouts;

(3) Caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;

(4) Caused by fire unless directly related to an eligible natural disaster;

(5) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(6) Caused by the collapse or failure of buildings or structures.

(d) Qualifying losses under this part for honey, where the honey production by colonies or bees was diminished, will not include losses:

(1) For the 2007 crop, for production from those bees acquired on or after February 28, 2007;

(2) Where the inability to extract was due to the unavailability of equipment, the collapse or failure of equipment, or apparatus used in the honey operation;

(3) Resulting from storage of honey after harvest;

(4) To honey production because of bee feeding;

(5) Caused by the application of chemicals;

(6) Caused by theft, fire, or vandalism;

(7) Caused by the movement of bees by the producer or any other person; or

(8) Due to disease or pest infestation of the colonies.

(e) Qualifying losses for other value loss crops, except nursery, will not include losses for the 2007 crop that were acquired on or after February 28, 2007.

(f) Loss calculations will take into account other conditions and adjustments provided for in this part.

### §760.811 Rates and yields; calculating payments.

(a)(1) Payments made under this part to a participant for a loss of quantity on a unit with respect to yield-based crops are determined by multiplying the average market price times 42 percent, times the loss of production which exceeds 35 percent of the expected production, as determined by FSA, of the unit.

(2) Payments made under this part to a participant for a quantity loss on a unit with respect to value-based crops are determined by multiplying the payment rate established for the crop by FSA times the loss of value that exceeds 35 percent of the expected production value, as determined by FSA, of the unit.

(3) As determined by FSA, additional quality loss payments may be made using a 25 percent quality loss threshold. The quality loss threshold is determined according to §760.817.

(b) Payment rates for the 2005, 2006, or 2007 year crop losses will be 42 percent of the average market price.

(c) Separate payment rates and yields for the same crop may be established by the State committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by FSA that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. Despite potential differences in yield or values, separate rates or yields will not be established for crops with different cultural practices, such as those grown organically or hydroponically.

(d) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(e) Each eligible participant's share of a disaster payment will be based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for assistance under this part.

(f) When calculating a payment for a unit loss:

(1) An unharvested payment factor will be applied to crop acreage planted but not harvested;

(2) A prevented planting factor will be applied to any prevented planted acreage eligible for payment; and

(3) Unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

### §760.812 Production losses; participant responsibility.

(a) Where available and determined accurate by FSA, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA county committee makes inquiry, participants are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the county committee; and

(5) Providing supporting documentation if the county committee has reason to question the damaging weather event or question whether all production has been accounted for.

(c) In determining production under this section, the participant must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

**§ 760.813 Determination of production.**

(a) Production under this part includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine benefits. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by FSA.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated by FSA with respect to the intended use or uses for disaster purposes based on historical production and acreage evidence provided by the participant and FSA will determine the eligible acres for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and average market price, 42 percent of the salvage value received will be deducted from the disaster payment.

(g) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(h) Production that is commingled between units before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective unit by FSA. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee will assign production for the unit when the county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(4) The participant has a contract to receive a guaranteed payment for all or a portion of the crop;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(j) For peanuts, the actual production is all peanuts harvested for nuts, regardless of their disposition or use, as adjusted for low quality.

(k) For tobacco, the actual production is the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

### §760.814 Calculation of acreage for crop losses other than prevented planted.

(a) Payment acreage of a crop is limited to the lesser of insured acreage or NAP covered acreage of the crop, as applicable, or actual acreage of the crop planted for harvest.

(b) In cases where there is a repeat crop or a multiple planted crop in more than one planting period, or if there is multiple cropped acreage meeting criteria established in paragraph (c) or (d) of this section, each of these crops may be considered separate crops if the county committee determines that all of the following conditions are met:

(1) Were planted with the intent to harvest;

(2) Were planted within the normal planting period for that crop;

(3) Meet all other eligibility provisions of this part including good farming practices; and

(4) Could reach maturity if each planting was harvested or would have been harvested.

(c) In cases where there is multiple-cropped acreage, each crop may be eligible for disaster assistance separately if both of the following conditions are met:

(1) The specific crops are approved by the State committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator and separately meet all requirements, including insurance or NAP requirements ; and

(2) The farm containing the multiple-cropped acreage has a history of successful multiple cropping more than one crop on the same acreage in the same crop year, in the year previous to the disaster, or at least 2 of the 4 crop years immediately preceding the disaster crop year based on timely filed crop acreage reports.

(d) A participant with multiple-cropped acreage not meeting the criteria in paragraph (c) of this section may be eligible for disaster assistance on more than one crop if the participant has verifiable records establishing a history of carrying out a successful multiple-cropping practice on the specific crops for which assistance is requested. All required records acceptable to FSA as determined by the Deputy Administrator must be provided before payments are issued.

(e) A participant with multiple-cropped acreage not meeting the criteria in paragraphs (c) or (d) of this section must select the crop for which assistance will be requested. If more than one participant has an interest in the multiple cropped acreage, all participants must agree to the crop designated for payment by the end of the application period or no payment will be approved for any crop on the multiple-cropped acreage.

(f) Benefits under this part apply to irrigated crops where, in cases determined by the Deputy Administrator, acreage was affected by a lack of surface irrigation water due to drought or contamination of ground water or surface irrigation water due to saltwater intrusion. In no case is a loss of ground water, for any reason, an eligible cause of loss.

### §760.815 Calculation of prevented planted acreage.

(a) When determining losses under this part, prevented planted acreage will be considered separately from planted acreage of the same crop.

(b) For insured crops, or NAP covered crops, as applicable, disaster payments under this part for prevented planted acreage will not be made unless RMA or FSA, as applicable, documentation indicates that the eligible participant received a prevented planting payment

under either NAP or the RMA-administered program.

(c) The participant must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the participant was prevented from planting the crop by an eligible disaster that:

(1) Prevented other producers from planting on acreage with similar characteristics in the surrounding area;

(2) Occurred after the previous planting period for the crop; and

(3) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for that crop.

(d) Prevented planted disaster benefits under this part do not apply to:

(1) Acreage not insured or NAP covered;

(2) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(3) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year, unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(4) Acreage for which the participant or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements;

(5) Acreage for which the participant cannot provide verifiable proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of producing at least a normal yield; and

(6) Any other acreage for which, for whatever reason, there is cause to question whether the crop could have been planted for a successful and timely harvest, or for which prevented planting credit is not allowed under the provisions of this part.

(e) Prevented planting payments are not provided on acreage that had either a previous or subsequent crop planted in the same crop year on the acreage, unless the county committee determines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

(3) Both the initial and subsequent planted crops were planted or prevented planting within the normal planting period for that crop;

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices; and

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in § 760.814.

(f)(1) Disaster benefits under this part do not apply to crops where the prevented planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that was prevented from being planted had insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

(2) Verifiable information collected by sources whose business or purpose is to record weather conditions, including, but not limited to, local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planting benefits under this part apply to irrigated crops where adequate irrigation facilities were in place before the eligible disaster and the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

(h) For NAP covered crops, prevented planting provisions apply according to part 718 of this chapter.

(i) Late-filed crop acreage reports for prevented planted acreage in previous years are not acceptable for CDP purposes.

### § 760.816 Value loss crops.

(a) Notwithstanding any other provisions of this part, this section applies to value loss crops and tropical crops. Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this part.

(b) For value loss crops, benefits under this part are calculated based on the loss of value at the time of the damaging weather or related condition, as determined by FSA.

(c) For tropical crops:

(1) CDP benefits for 2005 are calculated according to general provisions of part 1437, but not subpart F, of this title.

(2) CDP benefits for 2006 and 2007 are calculated according to part 1437, subpart F of this title.

### § 760.817 Quality losses for 2005, 2006, and 2007 crops.

(a) Subject to other provisions of this part, assistance will be made available to participants determined eligible under this section for crop quality losses of 25 percent or greater of the value that all affected production of the crop would have had if the crop had not suffered a quality loss.

(b) The amount of payment for a quality loss will be equal to 65 percent of the quantity of the crop affected by the quality loss, not to exceed expected production based on harvested acres, multiplied by 42 percent of the per unit average market value based on percentage of quality loss for the crop as determined by the Deputy Administrator.

(c) This section applies to all crops eligible for 2005, 2006, and 2007 crop disaster assistance under this part, with the exceptions of value loss crops, honey, and maple sap, and applies to crop production that has a reduced economic value due to the reduction in quality.

(d) Participants may not be compensated under this section to the extent that such participants have received assistance under other provisions of this part, attributable in whole or in part to diminished quality.

### § 760.818 Marketing contracts.

(a) A marketing contract must meet all of the conditions outlined in paragraphs (b), (c), and (d) of this section.

(b) A marketing contract, at a minimum, must meet all of the following conditions:

(1) Be a legal contract in the State where executed;

(2) Specify the commodity under contract;

(3) Specify crop year;

(4) Be signed by both the participant, or legal representative, and the purchaser of the specified commodity;

(5) Include a commitment to deliver the contracted quantity;

(6) Include a commitment to purchase the contracted quantity that meets specified minimum quality standards and other criteria as specified;

(7) Define a determinable quantity by containing either a:

(i) Specified production quantity or

(ii) A specified acreage for which production quantity can be calculated;

(8) Define a determinable price by containing either a:

(i) Specified price or

(ii) Method to determine such a price;

(9) Contain a relationship between the price and the quality using either:

(i) Specified quality standards or

(ii) A method to determine such quality standards from published third party data; and

(10) Have been executed within 10 days after:

(i) End of insurance period for insured crops or

(ii) Normal harvest date for NAP covered crops as determined by FSA.

(c) The purchaser of the commodity specified in the marketing contract must meet at least one of the following:

(1) Be a licensed commodity warehouseman;

(2) Be a business enterprise regularly engaged in the processing of a commodity, that possesses all licenses and permits for marketing the commodity required by the State in which it operates, and that possesses or has contracted for facilities with enough equipment to accept and process the

commodity within a reasonable amount of time after harvest; or

(3) Is able to physically receive the harvested production.

(d) In order for the commodity specified in the marketing contract to be considered sold pursuant to the marketing contract, the commodity must have been produced by the participant in the crop year specified in the contract, and at least one of the following conditions must be met:

(1) Commodity was sold under the terms of the contract or

(2) Participant attempted to deliver the commodity to the purchaser, but the commodity was rejected due to quality factors as specified in the contract.

(e) The amount of payment for affected production, as determined in § 760.817(b), sold pursuant to one or more marketing contracts will take into consideration the marketing contract price as determined by FSA.

(f) County committees have the authority to require a participant to provide necessary documentation, which may include, but is not limited to, previous marketing contracts fulfilled, to substantiate and validate quality standards in paragraph (b)(9) of this section and marketing contract price received for the commodity for which crop quality loss assistance is requested. In cases where the county committee has reason to believe the participant lacks the capacity or history to fulfill the quality provisions of the marketing contract the county committee will require such documentation.

### § 760.819 Misrepresentation, scheme, or device.

(a) A person is ineligible to receive assistance under this part if it is determined that such person has:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation under this program;

(3) Misrepresented any fact affecting a program or person determination; or

(4) Has violated or been determined ineligible under § 1400.5 of this title.

### § 760.820 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds, 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 title apply to any payments made under this part.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

(c) A debt or claim may be settled according to part 792 of this chapter.

### § 760.821 Compliance with highly erodible land and wetland conservation.

(a) The highly erodible land and wetland conservation provisions of part 12 of this title apply to the receipt of disaster assistance for 2005, 2006, and 2007 crop losses made available under this authority.

(b) Eligible participants must be in compliance with the highly erodible land and wetland conservation compliance provisions for the year for which financial assistance is requested.

## Subpart J—2005–2007 Livestock Indemnity Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

### § 760.900 Administration.

(a) The regulations in this subpart specify the terms and conditions applicable to the 2005–2007 Livestock Indemnity Program (2005–2007 LIP), which will be administered under the general supervision and direction of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee will take any action required by the regulations of this subpart that the county

FSA committee has not taken. The State FSA committee will 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 subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No delegation to a State or county FSA committee will preclude the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

### § 760.901 Applicability.

(a) This subpart establishes the terms and conditions under which the 2005–2007 LIP will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) for eligible counties as specified in § 760.902(a).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.909 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible disaster event. Drought is not an eligible disaster event except when anthrax, as a related condition that occurs as a result of drought, results in the death of eligible livestock.

### § 760.902 Eligible counties and disaster periods.

Counties are eligible for agricultural assistance under the 2005–2007 LIP if they received a timely Presidential designation, a timely Secretarial declaration, or a qualifying Administrator's Physical Loss Notice (APLN) determination in a county otherwise the subject of a timely Presidential declaration, or are counties contiguous to such counties. Presidential designations and Secretarial declarations will be considered timely only if made after January 1, 2005, and before February 28, 2007. Eligible counties, disaster events, and disaster periods are listed at *http://disaster.fsa.usda.gov*.

### § 760.903 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Adult beef bull* means a male beef bovine animal that was at least 2 years old and used for breeding purposes before it died.

*Adult beef cow* means a female beef bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

*Agricultural operation* means a farming operation.

*Application* means the ''2005–2007 Livestock Indemnity Program'' form.

*Application period* means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

*Buck* means a male goat.

*Catfish* means catfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer to apply for program benefits.

*Contract* means, with respect to contracts for the handling of livestock, a

written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

*Controlled environment* means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) and was in fact controlled by the participant at the time of the disaster.

*Crawfish* means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

*Doe* means a female goat.

*Equine animal* means a domesticated horse, mule, or donkey.

*Ewe* means a female sheep.

*Farming operation* means a business enterprise engaged in producing agricultural products.

*Goat* means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats. Goats are further defined by sex (bucks and does) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Livestock owner* means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible disaster.

*Non-adult beef cattle* means a bovine that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Non-adult buffalo or beefalo* means an animal of those breeds that does not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

*Non-adult dairy cattle* means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Poultry* means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

*Ram* means a male sheep.

*Sheep* means a domesticated, ruminant mammal of the genus *Ovis.* Sheep are further defined by sex (rams and ewes) and age (lambs).

*Swine* means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

### § 760.904 Limitations on payments and other benefits.

(a) A participant may receive benefits for livestock losses for only one of the 2005, 2006, or 2007 calendar years as specified under this part.

(b) A ''person'' as determined under part 1400 of this title may receive no more than $80,000 under this subpart. In applying the $80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(c) The provisions of part 1400, subpart G, of this title relating to limits to payments for individuals or entities with certain levels of adjusted gross income apply to this program.

(d) As a condition to receive benefits under this subpart, a participant must have been in compliance with the provisions of parts 12 and 718 of this title and must not otherwise be precluded from receiving benefits under any law.

(e) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart.

**§760.905 Eligible owners and contract growers.**

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock, as provided in §760.906(a), on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock; and

(2) Control of the eligible livestock, as provided in §760.906(b), on the day the livestock died.

**§760.906 Eligible livestock.**

(a) To be considered eligible livestock for livestock owners, livestock must be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, livestock must be poultry or swine as defined in §760.903 and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible, livestock must meet all of the following conditions:

(1) Died in an eligible county as a direct result of an eligible disaster event;

(i) After January 1, 2005, but before February 28, 2007;

(ii) No later than 60 calendar days from the ending date of the applicable disaster period, but before February 28, 2007; and

(iii) In the calendar year for which benefits are being requested.

(2) The disaster event that caused the loss must be the same event for which a natural disaster was declared or designated.

(3) Been maintained for commercial use as part of a farming operation on the day they died; and

(4) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) In those counties in §760.902, the following types of animals owned by a livestock owner are eligible livestock:

(1) Adult beef bulls;

(2) Adult beef cows;

(3) Adult buffalo or beefalo bulls;

(4) Adult buffalo or beefalo cows;

(5) Adult dairy bulls;

(6) Adult dairy cows;

(7) Catfish;

(8) Chickens, broilers, pullets;

(9) Chickens, chicks;

(10) Chickens, layers, roasters;

(11) Crawfish;

(12) Deer;

(13) Ducks;

(14) Ducks, ducklings;

(15) Equine;

(16) Geese, goose;

(17) Geese, gosling;

(18) Goats, bucks;

(19) Goats, does;

(20) Goats, kids;

(21) Non-adult beef cattle;

(22) Non-adult buffalo/beefalo;

(23) Non-adult dairy cattle;

(24) Reindeer

(25) Sheep, ewes;

(26) Sheep, lambs;

(27) Sheep, rams;

(28) Swine, feeder pigs under 50 pounds;

(29) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(30) Swine, sows, boars, barrows, gilts over 150 pounds;

(31) Turkeys, poults; and

(32) Turkeys, toms, fryers, and roasters.

(e) In those counties in §760.902, the following types of animals are eligible livestock for contract growers:

(1) Chickens, broilers, pullets;

(2) Chickens, layers, roasters;

(3) Geese, goose;

(4) Swine, boars, sows;

(5) Swine, feeder pigs;

(6) Swine, lightweight barrows, gilts;

(7) Swine, sows, boars, barrows, gilts; and

(8) Turkeys, toms, fryers, and roasters.

**§ 760.907 Application process.**

(a) To apply for 2005–2007 LIP, submit a completed application to the administrative county FSA office that maintains the farm records for your agricultural operation, a copy of your grower contract, if you are a contract grower, and other supporting documents required for determining your eligibility as an applicant. Supporting documents must show:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory, and

(3) Physical location of claimed livestock at the time of death.

(b) The application must be filed during the application period announced by the Deputy Administrator.

(c) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or 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 a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible disaster event during the applicable disaster period. The quantity and kind of livestock that died as a direct result of the eligible disaster event may be documented by: purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) Certification of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category determined by FSA, were in inventory at the time the applicable disaster event occurred; and

(iii) Other details required for FSA to determine the certification acceptable; and

(2) The third party provides their telephone number, address, and a written statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner; and

(iv) Other details required by FSA to determine the certification acceptable.

(f) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

**§ 760.908 Deceased individuals or dissolved entities.**

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

**§ 760.909 Payment calculation.**

(a) Under this subpart separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. Payments for the 2005–2007 LIP are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b)

and (c) of this section, by the number of eligible livestock in each category, as provided in §760.906. Adjustments will be applied in accordance with paragraphs (d) and (e) of this section.

(b) The 2005–2007 LIP national payment rate for eligible livestock owners is based on 26 percent of the average fair market value of the livestock.

(c) The 2005–2007 LIP national payment rate for eligible livestock contract growers is based on 26 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The 2005 payment calculated under 2005–2007 LIP for eligible livestock owners will be reduced by the amount the participant received under:

(1) The Livestock Indemnity Program (subpart E of this part);

(2) The Aquaculture Grant Program (subpart G of this part); and

(3) The Livestock Indemnity Program II (part 1416, subpart C of this title).

(e) The 2005 payment calculated under 2005–2007 LIP for eligible livestock contract growers will be reduced by the amount the participant received:

(1) Under the Livestock Indemnity Program (subpart E of this part);

(2) For the loss of income from the dead livestock from the party who contracted with the producer to grow the livestock; and

(3) Under the Livestock Indemnity Program II (part 1416, subpart C of this title).

### §760.910 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this subpart.

### §760.911 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds, 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 792 of this chapter apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payment in accordance with regulations governing the assignment of payments found at part 1404 of this title.

### §760.912 Records and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling such participant to receive a payment under this subpart must maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes such information to FSA must allow authorized representatives of USDA and the General Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

### §760.913 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

## Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

### §760.1000 Applicability.

(a) This subpart establishes the terms and conditions under which the

following programs will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 for participants affected by eligible disaster events and located in counties that are eligible as specified in § 760.1001:

(1) The 2005–2007 Livestock Compensation Program (2005–2007 LCP); and

(2) The 2005–2007 Catfish Grant Program (2005–2007 CGP).

(b) Farm Service Agency (FSA) funds as are necessary for the programs in subparts L and M of this part are available under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

### § 760.1001 Eligible counties, disaster events, and disaster periods.

(a) Except as provided in this subpart, FSA will provide assistance under the programs listed in § 760.1000 to eligible participants who have suffered certain losses due to eligible disaster events in eligible disaster counties provided in paragraph (c) of this section.

(b) The ''Disaster Period'' is the time period in which losses occurred for the particular disaster that may be considered eligible for the programs under subparts L and M of this part. The start and end dates for each eligible disaster period are specified at *http://disaster.fsa.usda.gov*.

(c) Eligible counties are those primary counties declared by the Secretary or designated for the applicable loss by the President, including counties contiguous to those counties, between January 1, 2005, and February 28, 2007 (that is after January 1, 2005 and before February 28, 2007). The listing is provided at *http://disaster.fsa.usda.gov*. For counties where there was an otherwise timely Presidential declaration, but the declarations do not cover agricultural physical loss, the subject counties may still be eligible if the counties were the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster timely designated by the President.

### § 760.1002 Definitions.

The following definitions apply to the programs in subpart L and M of this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Commercial use* means a use performed as part of the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

*Farming operation* means a business enterprise engaged in producing agricultural products.

### § 760.1003 Limitations on payments and other benefits.

(a) A participant may receive benefits for eligible livestock feed losses, including additional feed costs, for only one of the 2005, 2006, or 2007 calendar years under 2005–2007 LCP, subpart L of this part, or under the CGP of subpart M of this part.

(b) As specified in § 760.1106(c), the payment under the 2005–2007 LCP may not exceed the smaller of the calculated payment in § 760.1106(a) or the value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss.

(c) A person may receive no more than $80,000 under 2005–2007 LCP, subpart L of this part. In applying the $80,000 per person payment limitation, regardless of whether the 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits. The rules and definitions of part 1400 of this title apply in construing who is a qualified separate ''person'' for purposes of this limit. All payment eligibility requirements of part 1400 as they apply to any other payments, also apply to payments under subpart L of this part.

(d) For payments under 2005–2007 CGP, a farming operation may receive no more than $80,000, except for general partnerships and joint ventures, in which case assistance will not exceed $80,000 times the number of eligible members of the general partnership or joint venture. This limit must be enforced by the state government administering the grant program.

(e) The provisions of part 1400, subpart G, of this title apply to these programs. That is the rules that limit the eligibility for benefits of those individuals or entities with an adjusted gross income greater than a certain limit will be applied in the same manner to payments under subparts L and M of this part.

(f) As a condition to receive benefits under subparts L and M of this part, a participant must have been in compliance with the provisions of parts 12 and 718 of this title for the calendar year for which benefits are being requested and must not otherwise be precluded from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under subparts L and M of this part.

(h) In addition to limitations provided in subparts L and M of this part, participants cannot receive duplicate benefits under subparts L and M of this part for the same loss or any similar loss under:

(1) An agricultural disaster assistance provision contained in the announcement of the Secretary on January 26, 2006, or August 29, 2006;

(2) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234; 120 Stat. 418); or

(3) Any other disaster assistance program.

## Subpart L–2005–2007 Livestock Compensation Program

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

### §760.1100 Applicability.

This subpart sets forth the terms and conditions applicable to the 2005–2007 Livestock Compensation Program (LCP).

### §760.1101 Administration.

(a) This program is administered under the general supervision of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee must take any action required by the regulations of this subpart that the county FSA committee has not taken. The State committee must 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 subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator for Farm Programs may authorize state and county committees to waive or modify nonstatutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

### §760.1102 Definitions.

The following definitions apply to this subpart.

*Adult beef bull* means a male beef bovine animal that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

*Adult beef cow* means a female beef bovine animal that had delivered one or more offspring before the disaster period. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on the beginning date of the disaster period.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer is also considered

to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

*Adult dairy bull* means a male dairy bovine breed animal at least 2 years old used primarily for breeding dairy cows on the beginning date of the disaster period.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

*Agricultural operation* means a farming operation.

*Application* means the ''2005/2006/2007 Livestock Compensation Program'' form.

*Application period* means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

*Disaster period* means the applicable disaster period specified in § 760.1001.

*Equine animal* means a domesticated horse, mule, or donkey.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

*Non-adult beef cattle* means a bovine animal that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult beef cow or bull.

*Non-adult buffalo/beefalo* means an animal of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult dairy cow or bull.

*Owner* means one who had legal ownership of the livestock for which benefits are being requested under this subpart on the beginning date of the applicable disaster period as set forth in § 760.1001.

*Poultry* means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age and purpose of production, as determined by FSA.

*Sheep* means a domesticated, ruminant mammal of the genus *Ovis*.

*Swine* means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

### § 760.1103 Eligible livestock and producers.

(a) To be considered eligible livestock to generate benefits under this subpart, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine, or deer;

(2) Been physically located in the eligible disaster county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, roping, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, the participant's eligible livestock must have been located in the eligible disaster county on the beginning date of the disaster period. To be eligible, also, the livestock producer must have:

(1) Owned or cash-leased eligible livestock on the beginning date of the disaster period (provided that if there is a cash lease, only the cash lessee and not the owner will be eligible); and

(2) Suffered any of the following:

(i) A grazing loss on eligible grazing lands physically located in the eligible disaster county, where the forage was damaged or destroyed by an eligible disaster event, and intended for use as feed for the participant's eligible livestock;

(ii) A loss of feed from forage or feedstuffs physically located in the eligible disaster county, that was mechanically harvested and intended for use as feed for the participant's eligible livestock, that was damaged or destroyed after harvest as the result of an eligible disaster event;

(iii) A loss of feed from purchased forage or feedstuffs physically located in the eligible disaster county, intended for use as feed for the participant's eligible livestock, that was damaged or destroyed by an eligible disaster event; or

(iv) Increased feed costs incurred in the eligible disaster county, due to an eligible disaster event, to feed the participant's eligible livestock.

(c) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Equine;

(10) Reindeer;

(11) Elk;

(12) Poultry; and

(13) Deer.

(d) Ineligible livestock include, but are not limited to, livestock:

(1) Livestock that were or would have been in a feedlot regardless of whether there was a disaster or where such livestock were in a feedlot as part of a participant's normal business operation, as determined by FSA;

(2) Emus;

(3) Yaks;

(4) Ostriches;

(5) Llamas;

(6) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the disaster period;

(7) Any wild free roaming livestock, including horses and deer;

(8) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

### §760.1104 Application for payment.

(a) To apply for 2005–2007 LCP, an application and required supporting documentation must be submitted to the administrative county FSA office.

(b) The application must be filed during the application period announced by the Deputy Administrator for Farm Programs.

(c) Payments may be made for eligible losses suffered by an eligible livestock producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract, on behalf of the livestock producer, signs the application for payment. Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or 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 a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

### §760.1105 Application process.

(a) Participants must submit to FSA:

(1) A completed application in accordance with §760.1104;

(2) Adequate proof, as determined by FSA, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Was lost as a direct result of an eligible disaster event during an eligible disaster period specified in § 760.1001;

(iii) Was lost after January 1, 2005, but before February 28, 2007; and

(iv) Occurred in the calendar year for which benefits are being requested; and

(3) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents determined acceptable by FSA.

(b) [Reserved]

### § 760.1106 Payment calculation.

(a) Preliminary, unadjusted LCP payments are calculated for a producer by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock for the producer in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by FSA. As provided in subpart K of this part, a producer may receive benefits for only one of the three program years, 2005, 2006, or 2007. The producer must indicate which year has been chosen. Payments are available only with respect to disaster-related fees losses in the period from January 2, 2005 through February 27, 2007, in eligible counties for losses during the times specified for the disaster periods as specified in § 760.1001(b).

(b) The preliminary LCP payment calculated in accordance with paragraph (a) of this section:

(1) For 2005 LCP provided for under this subpart will be reduced by the amount the participant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of this part and LCP for the 2005 hurricanes under subpart B of part 1416 of this title; and

(2) For 2006 LCP under this subpart will be reduced by the amount the participant received for the same or similar loss under the Livestock Assistance Grant Program in accordance with subpart H of this part.

(c) Subject to such other limitations as may apply, including those in paragraph (b) of this section, the payment under the 2005–2007 LCP may not exceed for the relevant year chosen by the producer the smaller of either the:

(1) Payment calculated in paragraph (a) of this section for that year; or

(2) Value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss as determined by FSA for that year.

(d) The actual payment to the producer will be the amount provided for in paragraph (c) of this section subject to the adjustments and limits provided for in this section or in this part.

### § 760.1107 Appeals.

The appeal regulations in parts 11 and 780 of this title apply to determinations made under this subpart.

### § 760.1108 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in parts 792 and 1403 of this title apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

### § 760.1109 Recordkeeping and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling the participant to receive a payment under this subpart must maintain any books, records, and

accounts supporting that information for a minimum of 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes the information to FSA must allow authorized representatives of USDA and the General Accounting Office, during regular business hours, and to enter upon, inspect, examine, and make copies of the books or records, and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of the information provided by or for the participant.

### §760.1110 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this title, provided that interest will run from the date of the disbursement of the refund to the producer.

## Subpart M—2005–2007 Catfish Grant Program

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

### §760.1200 Administration.

FSA will administer a limited 2005–2007 CGP to provide assistance to catfish producers in eligible counties that suffered catfish feed and related losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005, and before February 28, 2007. Under the 2005–2007 CGP, FSA will provide grants to State governments in those States that have catfish producers that are located in eligible counties and that have agreed to participate in the 2005–2007 CGP. The amount of each grant will be based on the total value of catfish feed and related losses suffered in eligible counties in the subject state. Each State must submit a work plan providing a summary of how the State will implement the 2005–2007 CGP.

### §760.1201 Application for payment.

Application procedures for 2005–2007 CGP will be as determined by the State governments.

### §760.1202 Eligible producers.

(a) To be considered an eligible catfish producer, an participant must:

(1) Raise catfish in a controlled environment and be physically located in an eligible county on the beginning date of the disaster period;

(2) Maintain the catfish for commercial use as part of a farming operation;

(3) Have a risk in production of such catfish; and

(4) Have suffered one of the following types of losses relating to catfish feed as a direct result of the county's disaster event that occurred in that year:

(i) Physical loss of feed that was damaged or destroyed,

(ii) Cost to the extent allowed by FSA, associated with lost feeding days, or

(iii) Cost associated with increased feed prices.

(b) [Reserved]

### §760.1203 Payment calculation.

(a) Producers must be paid for feed losses of higher costs only for one of the three years, 2005, 2006, or 2007, and the loss must be for eligible catfish feed losses in an eligible county, as determined pursuant to subpart K of this part. Further, the feed loss or higher costs must be caused by the disaster that caused the county to qualify as an eligible county. The loss, moreover, to qualify for payment, must have occurred during the allowable time period provided in this part, namely the period beginning on January 2, 2005 and ending February 27, 2007. The producer must pick the year of the benefits sought.

(b) Subject to all adjustments and limits provided for in this part the amount of assistance provided to each participant from the State will be equal to the smaller of:

(1) Depending on the year chosen by the producer, the value of the participant's 2005, 2006, or 2007 catfish feed and related losses as a direct result of an

eligible disaster event, as determined by the State or

(2) Result of multiplying:

(i) Total tons of catfish feed purchased by the participant in depending on the year chosen by the producer 2005 (entire year), 2006 (entire year), or 2007 (through February 27, 2007, only), times,

(ii) Catfish feed payment rate for 2005, 2006, or 2007, as applicable, as set by FSA.

(c) The catfish feed rate represents 61 percent of the normal cost of a ton of feed for a year divided by six to reflect the normal feeding price for catfish.

# PART 761—GENERAL PROGRAM ADMINISTRATION

## Subpart A—General Provisions

Sec.
761.1 Introduction.
761.2 Abbreviations and definitions.
761.3 Civil rights.
761.4 Conflict of interest.
761.5 Restrictions on lobbying.
761.6 Appeals.
761.7 Appraisals.
761.8 Loan limitations.
761.9 Interest rates for direct loans.
761.10 Planning and performing construction and other development.
761.11–761.50 [Reserved]

## Subpart B—Supervised Bank Accounts

761.51 Establishing a supervised bank account.
761.52 Deposits into a supervised bank account.
761.53 Interest bearing accounts.
761.54 Withdrawals from a supervised bank account.
761.55 Closing a supervised bank account.
761.56–761.100 [Reserved]

## Subpart C—Supervised Credit

761.101 Applicability.
761.102 Borrower recordkeeping, reporting, and supervision.
761.103 Farm assessment.
761.104 Developing the farm operating plan.
761.105 Year-end analysis.
761.106–761.200 [Reserved]

## Subpart D—Allocation of Farm Loan Programs Funds to State Offices

761.201 Purpose.
761.202 Timing of allocations.
761.203 National reserves for Farm Ownership and Operating loans.
761.204 Methods of allocating funds to State Offices.
761.205 Computing the formula allocation.
761.206 Pooling of unobligated funds allocated to State Offices.
761.207 Distribution of loan funds by State Offices.
761.208 Target participation rates for socially disadvantaged groups.
761.209 Loan funds for beginning farmers.
761.210 Transfer of funds.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63285, Nov. 8, 2007, unless otherwise noted.

## Subpart A—General Provisions

### § 761.1 Introduction.

(a) The Administrator delegates the responsibility to administer Farm Loan Programs of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to the Deputy Administrator for Farm Loan Programs subject to any limitations established in 7 CFR 2.16(a)(2) and 7 CFR 2.42.

(b) The Deputy Administrator may:

(1) Redelegate authorities received under subparagraph (a); and

(2) Establish procedures for further redelegation of authority.

(c) Parts 761 through 767 describe the Agency's policies for its Farm Loan Programs. The objective of these programs is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after sustaining substantial losses as a result of a designated or declared disaster. These regulations apply to loan applicants, borrowers, lenders, holders, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(d) This part describes the Agency's general and administrative policies for its guaranteed and direct Farm Loan Programs. In general, this part addresses issues that affect both guaranteed and direct loan programs.

### § 761.2 Abbreviations and definitions.

The following abbreviations and definitions are applicable to the Farm

Loan Programs addressed in parts 761 through 767 unless otherwise noted.

(a) *Abbreviations.*

*CLP* Certified Lender Program.

*DSA* Disaster Set-Aside.

*EE* Economic Emergency loan.

*EM* Emergency loan.

*FLP* Farm Loan Programs.

*FO* Farm Ownership loan.

*FSA* Farm Service Agency, an Agency of the USDA, including its personnel and any successor Agency.

*Lo-Doc* Low-Documentation Operating loan.

*OGC* Office of the General Counsel of the USDA.

*OL* Operating loan.

*PLP* Preferred Lender Program.

*RHF* Rural Housing loan for farm service buildings.

*RL* Recreation loan.

*SAA* Shared Appreciation Agreement.

*SA* Shared Appreciation loan.

*SEL* Standard Eligible Lender.

*ST* Softwood Timber loan.

*SW* Soil and Water loan.

*USDA* United States Department of Agriculture.

*USPAP* Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

*Abandoned security property* is security property that a borrower is not occupying, is not in possession of, or has relinquished control of and has not made arrangements for its care or sale.

*Accrued deferred interest* is unpaid interest from past due installments posted to a borrower's loan account.

*Act* is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

*Additional security* is property which provides security in excess of the amount of security value equal to the loan amount.

*Adequate security* is property which is required to provide security value at least equal to the direct loan amount.

*Adjustment* is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

*Administrative appraisal review* is a review of an appraisal to determine if the appraisal:

(1) Meets applicable Agency requirements; and

(2) Is accurate outside the requirements of standard 3 of USPAP.

*Agency* is the FSA.

*Agreement for the use of proceeds* is an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.

*Agricultural commodity* is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquaculture species, and other plant and animal production, as determined by the Agency.

*Allonge* is an attachment or an addendum to a promissory note.

*Allowable costs* are those costs for replacement or repair that are supported by acceptable documentation, including, but not limited to, written estimates, invoices, and bills.

*Applicant* is the individual or entity applying for a loan or loan servicing under either the direct or guaranteed loan program.

*Aquaculture* is the husbandry of any aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment of which the applicant has exclusive rights to use.

*Assignment of guaranteed portion* is a process by which the lender transfers the right to receive payments or income on a guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

*Assignment of indemnity* is the transfer of rights to compensation under an insurance contract.

*Assistance* is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.

*Assumption* is the act of agreeing to be legally responsible for another party's indebtedness.

*Assumption agreement* is a written agreement on the appropriate Agency form to pay the FLP debt incurred by another.

*Average agricultural loan customer* is a conventional farm borrower who is required to pledge crops, livestock, other chattel and/or real estate security for the loan. This term does not include a high-risk farmer with limited security and management ability who is generally charged a higher interest rate by conventional agricultural lenders. Also, this term does not include a low-risk farm customer who obtains financing on a secured or unsecured basis, who is able to pledge as collateral for a loan items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance.

*Basic part of an applicant's total farming operation* is any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

*Basic security* is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

*Beginning farmer* is an individual or entity who:

(1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan, as applicable;

(2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm:

(i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the median farm acreage of the farms in the county where the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the members are beginning farmers.

*Beginning Farmer Downpayment Loan* is a type of FO loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

*Borrower (or debtor)* is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term ''borrower'' includes all parties liable

for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

*Cancellation* is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred during the period of the budget. Advances and principal repayments of lines of credit may be excluded from a cash flow budget. Cash flow budgets for guaranteed loans under $125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a ''monthly cash flow budget.''

*Chattel or real estate essential to the operation* is chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

*Chattel security* is property that may consist of, but is not limited to: Crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

*Civil action* is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

*Closing agent* is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term ''title company'' does not include ''title insurance company.''

*Coastal barrier* is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.

*Compromise* is the settlement of an FLP debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

*Conditional commitment* is the Agency's commitment to a lender that the material the lender has submitted is approved subject to the completion of all listed conditions and requirements.

*Conservation Contract* is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding FLP debt.

*Conservation Contract review team* is comprised by the appropriate offices of FSA, the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service, State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a proposed conservation contract.

*Consolidation* is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.

*Construction* is work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.

*Controlled* is when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

*Controlled substance* is the term as defined in 21 U.S.C. 812.

*Cooperative* is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

*Corporation* is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

*Cosigner* is a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.

*County* is a local administrative subdivision of a State or similar political subdivision of the United States.

*County average yield* is the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

*Criminal action* is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.

*Crop allotment or quota* is a farm's share of an approved national tobacco or peanut allotment or quota.

*Current market value buyout* is the termination of a borrower's loan obligations to the Agency in exchange for payment of the current appraised value of the borrower's security property and non-essential assets, less any prior liens.

*Debt forgiveness* is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

Debt forgiveness does not include:

(1) Debt reduction through a conservation contract;

(2) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;

(3) Prior debt forgiveness that has been repaid in its entirety; and

(4) Consolidation, rescheduling, reamortization, or deferral of a loan.

*Debt settlement* is a compromise, adjustment, or cancellation of an FLP debt.

*Debt service margin* is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

*Debt writedown* is the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

*Default* is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

*Deferral* is a postponement of the payment of interest or principal, or both.

*Delinquent borrower,* for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

*Direct loan* is a loan funded and serviced by the Agency as the lender.

*Disaster* is an event of unusual and adverse weather conditions or other natural phenomena, or quarantine, that has substantially affected the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political

subdivision in the disaster area as designated by the Agency.

*Disaster area* is the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.

*Disaster set-aside* is the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart B of this chapter.

*Disaster yield* is the per-acre yield of an agricultural commodity for the operation during the production cycle when the disaster occurred.

*Economic Emergency loan* is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded; however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.

*Emergency loan* is a loan made to eligible applicants who have incurred substantial financial losses from a disaster.

*Entity* is a corporation, partnership, joint operation, cooperative, limited liability company or trust.

*Essential family living and farm operating expenses:*

(1) Are those that are basic, crucial or indispensable.

(2) Are determined by the Agency based on the following considerations:

(i) The specific borrower's operation;

(ii) What is typical for that type of operation in the area; and

(iii) What is an efficient method of production considering the borrower's resources.

(3) Include, but are not limited to, essential: Household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.

*Established farmer* is a farmer who operates the farm (in the case of an entity, its members as a group) who:

(1) Actively participated in the operation and the management, including, but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the operation's projected cash flow for the next crop year or the next 12-month period, as mutually determined; and

(5) Is not:

(i) An entity whose members are themselves entities;

(ii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract; or

(iii) An operation which employs a full time farm manager.

*False information* is information provided by an applicant, borrower or

other source to the Agency that the applicant or borrower knows to be incorrect.

*Family farm* is a farm that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;

(2) Has both physical labor and management provided as follows:

(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(ii) A substantial amount of labor to operate the farm is provided by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(3) May use full-time hired labor in amounts only to supplement family labor.

(4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

*Family living expenses* are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

*Family members* are the immediate members of the family residing in the same household with the borrower.

*Farm* is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

*Farmer* is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.

*Farm income* is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.

*Farm Loan Programs* are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

*Farm Ownership loan* is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes the Beginning Farmer Downpayment loan.

*Farm Program payments* are benefits received from FSA for any commodity, disaster, or cost share program.

*Feasible plan* is when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.

*Financially distressed borrower* is a borrower unable to develop a feasible plan for the current or next production cycle.

*Financially viable operation*, for the purposes of considering a waiver of OL term limits under § 764.252 of this chapter, is a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

(1) Meet annual operating expenses and debt payments as they become due;

(2) Meet essential family living expenses to the extent they are not met by dependable non-farm income;

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

*Fixture* is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

*Floodplains* are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain is used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

*Foreclosed* is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

*Foreclosure sale* is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.

*Good faith* is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

*Graduation* is the payment in full of all direct FLP loans made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

*Guaranteed loan* is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

*Guarantor* is a party not included in the farming operation who assumes responsibility for repayment in the event of default.

*Hazard insurance* is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

*Highly erodible land* is land as determined by Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

*Holder* is a person or organization other than the lender that holds all or a part of the guaranteed portion of an Agency guaranteed loan but has no servicing responsibilities. When the lender assigns a part of the guaranteed loan by executing an Agency assignment form, the assignee becomes a holder.

*Homestead protection* is the previous owner's right to lease with an option to purchase the principal residence and up to 10 acres of adjoining land which secured an FLP direct loan.

*Homestead protection property* is the principal residence that secured an FLP direct loan and is subject to homestead protection.

*Household contents* are essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.

*Inaccurate information* is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.

*Indian reservation* is all land located within the limits of any Indian reservation under the jurisdiction of the

United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

*In-house expenses* are expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel, supplies, and overhead.

*Interest Assistance Agreement* is the appropriate Agency form executed by the Agency and the lender containing the terms and conditions under which the Agency will make interest assistance payments to the lender on behalf of the guaranteed loan borrower.

*Inventory property* is real estate or chattel property and related rights that formerly secured an FLP loan and to which the Federal Government has acquired title.

*Joint financing arrangement* is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.

*Joint operation* is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

*Leasehold* is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.

*Lender* is the organization making and servicing a loan, or advancing and servicing a line of credit that is guaranteed by the Agency. The lender is also the party requesting a guarantee.

*Lender's Agreement* is the appropriate Agency form executed by the Agency and the lender setting forth their loan responsibilities when the Loan Guarantee is issued.

*Lien* is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

*Limited resource interest rate* is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

(1) FO or OL loan assistance under part 764 of this title; or

(2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

*Line of Credit Agreement* is a contract between the borrower and the lender that contains certain lender and borrower conditions, limitations, and responsibilities for credit extension and acceptance where loan principal balance may fluctuate throughout the term of the contract.

*Liquidation* is the act of selling security for recovery of amounts owed to the Agency or lender.

*Liquidation expenses* are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.

*Livestock* is a member of the animal kingdom, or product thereof, as determined by the Agency.

*Loan Agreement* is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

*Loan servicing programs* include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.

*Loan transaction* is any loan approval or servicing action.

*Loss claim* is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

*Loss rate* is the net amount of loan loss claims paid on FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.

*Low-Documentation Operating loan* is an OL loan made to eligible applicants based on reduced documentation.

*Major deficiency* is a deficiency that directly affects the soundness of the loan.

*Majority interest* is more than a 50 percent interest in an entity held by an individual or group of individuals.

*Market value* is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

*Mineral right* is an ownership interest in minerals in land, with or without ownership of the surface of the land.

*Minor deficiency* is a deficiency that violates Agency regulations, but does not affect the soundness of the loan.

*Mortgage* is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term ''mortgage'' also includes the terms ''deed of trust'' and ''security agreement.''

*Natural disaster* is unusual and adverse weather conditions or natural phenomena that have substantially affected farmers by causing severe physical or production, or both, losses.

*Negligent servicing* is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

*Negotiated sale* is a sale in which there is a bargaining of price or terms, or both.

*Net recovery value of security* is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

*Net recovery value of non-essential assets* is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

*Non-capitalized interest* is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

*Non-eligible enterprise* is a business that meets the criteria in any one of the following categories:

(1) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g., there is no established or stable market for them or production is speculative in nature.

(2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.

(3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.

(4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

*Non-essential assets* are assets in which the borrower has an ownership interest, that:

(1) Do not contribute to:

(i) Income to pay essential family living expenses, or

(ii) The farming operation; and

(2) Are not exempt from judgment creditors or in a bankruptcy action.

*Non-program loan* is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program

purposes. Such loans are made or continued only when it is in the best interest of the Agency.

*Normal income security* is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

*Normal production yield* as used in 7 CFR part 764 for EM loans, is:

(1) The per acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;

(2) The applicant's own production records, or the records of production on which FSA Farm Program payments are made contained in the applicant's Farm Program file, if available, for the previous 3 years, when the actual production history in paragraph (1) of this definition is not available;

(3) The county average production yield, when the production records outlined in paragraphs (1) and (2) of this definition are not available.

*Operating loan* is a loan made to an eligible applicant to assist with the financial costs of operating a farm. The term also includes a Youth loan.

*Operator* is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm.

*Participated in the business operations of a farm* requires that an applicant has:

(1) Been the owner, manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

*Partnership* is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

*Past due* is when a payment is not made by the due date.

*Physical loss* is verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

*Potential liquidation value* is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

*Present value* is the present worth of a future stream of payments discounted to the current date.

*Presidentially-designated emergency* is a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

*Primary loan servicing programs* include:

(1) Loan consolidation and rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource rate program;

(3) Deferral;

(4) Write-down of the principal or accumulated interest; or

(5) Any combination of paragraphs (1) through (4) of this definition.

*Production cycle* is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

*Production loss* is verifiable damage or destruction with respect to annual growing crops.

*Program loans* include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

*Promissory note* is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms ''promissory note'' and ''note'' are interchangeable.

*Prospectus* consists of a transmittal letter, a current balance sheet and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific Agency direct loan applicants and borrowers.

*Protective advance* is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

*Quarantine* is a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

*Reamortization* is the rewriting of rates or terms, or both, of a loan made for real estate purposes.

*Reasonable rates and terms* are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The ''similar period of time'' of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

*Recoverable cost* is a loan cost expense chargeable to either a borrower or property account.

*Recreation loan* is a loan that was made to eligible applicants to assist in the conversion of all or a portion of the farm they owned or operated to outdoor income producing recreation enterprises to supplement or supplant farm income. RL's are no longer funded, however, such outstanding loans are serviced by the Agency.

*Redemption right* is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

*Related by blood or marriage* is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

*Relative* is the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.

*Repossessed property* is security property in the Agency's custody.

*Rescheduling* is the rewriting of the rates or terms, or both, of a loan made for operating purposes.

*Restructuring* is changing the terms of a debt through rescheduling, reamortization, deferral, writedown, or a combination thereof.

*Rural youth* is a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.

*Security* is property or right of any kind that is subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' will be considered a reference to the term ''security.''

*Security instrument* includes any document giving the Agency a security interest on real or personal property.

*Security value* is the market value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

*Shared Appreciation Agreement* is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower on the appropriate Agency form that requires the borrower who has received a writedown on a direct or guaranteed loan to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

*Socially disadvantaged applicant* is an applicant who is a member of a socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm

business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

*Socially disadvantaged group* is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

*Softwood Timber Program loan* was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

*Soil and Water loan* is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

*Subordination* is a creditor's temporary relinquishment of all or a portion of its lien priority in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

*Subsequent loan* is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

*Supervised bank account* is an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.

*Technical appraisal review* is a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.

*Transfer and assumption* is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

*Trust* is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

*Unaccounted for security* is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

*Unauthorized assistance* is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

*Uniform Standards of Professional Appraisal Practice* are standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

*United States* is any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.

*U. S. Attorney* is an attorney for the United States Department of Justice.

*Veteran* is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

*Wetlands* are those lands or areas of land as determined by the Natural Resources Conservation Service to meet

the requirements provided in section 1201 of the Food Security Act of 1985.

*Working capital* is cash available to conduct normal daily operations including, but not limited to, paying for feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.

*Youth loan* is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.

[72 FR 63285, Nov. 8, 2007; 72 FR 74153, Dec. 31, 2007]

### §761.3 Civil rights.

Part 15d of this title contains applicable regulations pertaining to civil rights and filing of discrimination complaints by program participants.

### §761.4 Conflict of interest.

The Agency enforces conflict of interest policies to maintain high standards of honesty, integrity, and impartiality in the making and servicing of direct and guaranteed loans. These requirements are established in 5 CFR parts 2635 and 8301.

### §761.5 Restrictions on lobbying.

A person who applies for or receives a loan made or guaranteed by the Agency must comply with the restrictions on lobbying in 7 CFR part 3018.

### §761.6 Appeals.

Except as provided in 7 CFR part 762, appeal of an adverse decision made by the Agency will be handled in accordance with 7 CFR parts 11 and 780.

### §761.7 Appraisals.

(a) *General.* This section describes Agency requirements for:

(1) Real estate and chattel appraisals made in connection with the making and servicing of direct FLP and Non-program loans; and

(2) Appraisal reviews conducted on appraisals made in connection with the making and servicing of direct and guaranteed FLP and Non-program loans.

(b) *Appraisal standards.* (1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. A current copy of USPAP along with other applicable procedures and regulations are available for review in each Agency State Office.

(2) When a chattel appraisal is required, it must be completed on an applicable Agency form (available in each Agency State Office) or other format containing the same information.

(c) *Use of an existing real estate appraisal.* Except where specified elsewhere, when a real estate appraisal is required, the Agency will use the existing real estate appraisal to reach loan making or servicing decisions under either of the following conditions:

(1) The appraisal was completed within the previous 12 months and the Agency determines that:

(i) The appraisal meets the provisions of this section and the applicable Agency loan making or servicing requirements; and

(ii) Market values have remained stable since the appraisal was completed; or

(2) The appraisal was not completed in the previous 12 months, but has been updated by the appraiser or appraisal firm that completed the appraisal, and both the update and the original appraisal were completed in accordance with USPAP.

(d) *Appraisal reviews.* (1) With respect to a real estate appraisal, the Agency may conduct a technical appraisal review or an administrative appraisal review, or both.

(2) With respect to a chattel appraisal, the Agency may conduct an administrative appraisal review.

### §761.8 Loan Limitations.

(a) *Dollar limits.* The outstanding principal balances for an applicant or anyone who will sign the promissory note cannot exceed any of the following at the time of loan closing or assumption of indebtedness. If the outstanding principal balance exceeds any of the limits at the time of approval, the farm operating plan must reflect that funds will be available to reduce the indebtedness prior to loan closing or assumption of indebtedness.

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased at the beginning of each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(2) Operating loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—the amount in paragraph (a)(1)(ii) of this section plus $200,000;

(5) Emergency loans—$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—the amount in paragraph (a)(1)(ii) of this section plus $700,000.

(b) *Guaranteed loan limit.* The dollar limits of guaranteed loans will be increased each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the National Agricultural Statistics Service, USDA. The maximum loan limits for the current fiscal year are available in any FSA office and on the FSA website at *http://www.fsa.usda.gov*.

(c) *Line of credit advances.* The total dollar amount of guaranteed line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

### § 761.9 Interest rates for direct loans.

Interest rates for all direct loans are set in accordance with the Act. A copy of the current interest rates may be obtained in any Agency office.

### § 761.10 Planning and performing construction and other development.

(a) *Purpose.* This section describes Agency policies regarding the planning and performing of construction and other development work performed with:

(1) Direct FLP loan funds; or

(2) Insurance or other proceeds resulting from damage or loss to direct loan security.

(b) *Funds for development work.* The applicant or borrower:

(1) Must provide the Agency with an estimate of the total cash cost of all planned development prior to loan approval;

(2) Must show proof of sufficient funds to pay for the total cash cost of all planned development at or before loan closing;

(3) Must not incur any debts for materials or labor or make any expenditures for development purposes prior to loan closing with the expectation of being reimbursed from Agency loan funds.

(c) *Scheduling, planning, and completing development work.* The applicant or borrower:

(1) Is responsible for scheduling and planning development work in a manner acceptable to the Agency and must furnish the Agency information fully describing the planned development, the proposed schedule, and the manner in which it will be accomplished;

(2) Is responsible for obtaining all necessary State and local construction approvals and permits prior to loan closing;

(3) Must ensure that all development work meets the environmental requirements established in subpart G of 7 CFR part 1940;

(4) Must schedule development work to start as soon as feasible after the loan is closed and complete work as quickly as practicable;

(5) Is responsible for obtaining any required technical services from qualified technicians, tradespeople, and contractors.

(d) *Construction and repair standards.* (1) The construction of a new building and the alteration or repair of an existing building must conform with industry-acceptable construction practices and standards.

(2) All improvements to a property must conform to applicable laws, ordinances, codes, and regulations.

(3) The applicant or borrower is responsible for selecting a design standard that meets all applicable local and state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management.

(4) The Agency will require drawings, specifications, and estimates to fully describe the work as necessary to protect the Agency's financial interests. The drawings and specifications must identify any specific development standards being used. Such information must be sufficiently complete to avoid any misunderstanding as to the extent, kind, and quality of work to be performed.

(5) The Agency will require technical data, tests, or engineering evaluations to support the design of the development as necessary to protect its financial interests.

(6) The Agency will require the applicant or borrower to provide written certification that final drawings and specifications conform with the applicable development standard as necessary to protect its financial interests. Certification must be obtained from individuals or organizations trained and experienced in the compliance, interpretation, or enforcement of the applicable development standards, such as licensed architects, professional engineers, persons certified by a relevant national model code organization, authorized local building officials, or national code organizations.

(e) *Inspection.* (1) The applicant or borrower is responsible for inspecting development work as necessary to protect their interest.

(2) The applicant or borrower must provide the Agency written certification that the development conforms to the plans and good construction practices, and complies with applicable laws, ordinances, codes, and regulations.

(3) The Agency will require the applicant or borrower to obtain professional inspection services during construction as necessary to protect its financial interests.

(4) Agency inspections do not create or imply any duty or obligation of the Agency to the applicant or borrower.

(f) *Warranty and lien waivers.* The applicant or borrower must obtain and submit all lien waivers on any construction before the Agency will issue final payment.

(g) *Surety.* The Agency will require surety to guarantee both payment and performance for construction contracts as necessary to protect its financial interests.

(h) *Changing the planned development.* An applicant or borrower must request, in writing, Agency approval for any change to a planned development. The Agency will approve a change if all of the following are met:

(1) It will not reduce the value of the Agency's security;

(2) It will not adversely affect the soundness of the farming operation;

(3) It complies with all applicable laws and regulations;

(4) It is for an authorized loan purpose;

(5) It is within the scope of the original loan proposal;

(6) If required, documentation that sufficient funding for the full amount of the planned development is approved and available;

(7) If required, surety to cover the full revised development amount has been provided; and

(8) The modification is certified in accordance with paragraph (d) (6) of this section.

**§§ 761.11–761.50 [Reserved]**

## Subpart B—Supervised Bank Accounts

### § 761.51 Establishing a supervised bank account.

(a) Supervised bank accounts will be used to:

(1) Assure correct use of funds planned for capital purchases or debt refinancing and perfection of the Agency's security interest in the assets purchased or refinanced when electronic funds transfer or treasury check processes are not practicable;

(2) Protect the Agency's security interest in insurance indemnities or other loss compensation resulting from loss or damage to loan security; or

(3) Assist borrowers with limited financial skills with cash management, subject to the following conditions:

(i) Use of a supervised bank for this purpose will be temporary and infrequent;

(ii) The need for a supervised bank account in this situation will be determined on a case-by-case basis; and

(iii) The borrower agrees to the use of a supervised bank account for this purpose by executing the deposit agreement.

(b) The borrower may select the financial institution in which the account will be established, provided the institution is Federally insured. If the borrower does not select an institution, the Agency will choose one.

(c) Only one supervised bank account will be established for any borrower.

(d) If both spouses sign an FLP note and security agreement, the supervised bank account will be established as a joint tenancy account with right of survivorship from which either borrower can withdraw funds.

(e) If the funds to be deposited into the account cause the balance to exceed $100,000, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over $100,000, before the deposit is made.

(1) If the financial institution is not a member of the Federal Reserve System, the institution must pledge acceptable collateral with a correspondent bank that is a member of the Federal Reserve System. The correspondent bank must inform the Federal Reserve Bank that it is holding securities pledged for the supervised bank account in accordance with 31 CFR part 202 (Treasury Circular 176).

(2) When the balance in the account has been reduced, the financial institution may request a release of part or all of the collateral, as applicable, from the Agency.

### § 761.52 Deposits into a supervised bank account.

(a) Checks or money orders may be deposited into a supervised bank account provided they are not payable:

(1) Solely to the Federal Government or any agency thereof; or

(2) To the Treasury of the United States as a joint payee.

(b) Loan proceeds may be deposited electronically.

### § 761.53 Interest bearing accounts.

(a) A supervised bank account, if possible, will be established as an interest bearing deposit account provided that the funds will not be immediately disbursed, and the account is held jointly by the borrower and the Agency if this arrangement will benefit the borrower.

(b) Interest earned on a supervised bank account will be treated as normal income security.

### § 761.54 Withdrawals from a supervised bank account.

(a) The Agency will authorize a withdrawal from the supervised bank account for an approved purpose after ensuring that:

(1) Sufficient funds in the supervised bank account are available;

(2) No loan proceeds are disbursed prior to confirmation of proper lien position, except to pay for lien search if needed;

(3) No checks are issued to ''cash;'' and

(4) The use of funds is consistent with the current farm operating plan or other agreement with the Agency.

(b) A check must be signed by the borrower with countersignature of the Agency, except as provided in paragraph (c) of this section. All checks must bear the legend ''countersigned, not as co-maker or endorser.''

(c) The Agency will withdraw funds from a supervised bank account without borrower counter-signature only for the following purposes:

(1) For application on Agency indebtedness;

(2) To refund Agency loan funds;

(3) To protect the Agency's lien or security;

(4) To accomplish a purpose for which such advance was made; or

(5) In the case of a deceased borrower, to continue to pay necessary farm expenses to protect Agency security in conjunction with the borrower's estate.

### §761.55 Closing a supervised bank account.

(a) If the supervised bank account is no longer needed and the loan account is not paid in full, the Agency will determine the source of the remaining funds in the supervised bank account. If the funds are determined to be:

(1) Loan funds:

(i) From any loan type, except Youth loan, and the balance is less than $1,000, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(ii) From a Youth loan, and the balance is less than $100, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(2) Loan funds:

(i) From any loan type, except Youth loan, and the balance is $1,000 or greater, the Agency will apply the balance to the FLP loan;

(ii) From a Youth loan, and the balance is $100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any remaining balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

### §§761.56–761.100 [Reserved]

## Subpart C—Supervised Credit

### §761.101 Applicability.

This subpart applies to all direct applicants and borrowers, except borrowers with only Non-program loans.

### §761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

(1) Production (e.g., total and per unit for livestock and crops);

(2) Revenues, by source;

(3) Other sources of funds, including borrowed funds;

(4) Operating expenses;

(5) Interest;

(6) Family living expenses;

(7) Profit and loss;

(8) Tax-related information;

(9) Capital expenses;

(10) Outstanding debt; and

(11) Debt repayment.

(b) A borrower also must agree in writing to:

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all

other loan-related requirements and documents;

(2) Submit financial information and an updated farm operating plan when requested by the Agency;

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance may adversely impact future requests for assistance.

**§ 761.103 Farm assessment.**

(a) The Agency assesses each farming operation to determine the applicant's financial condition, organizational structure, management strengths and weaknesses, appropriate levels of Agency oversight, credit counseling needs, and training needs. The applicant will participate in developing the assessment.

(b) The initial assessment must evaluate, at a minimum, the:

(1) Farm organization and key personnel qualifications;

(2) Type of farming operation;

(3) Goals for the operation;

(4) Adequacy of real estate, including facilities, to conduct the farming operation;

(5) Adequacy of chattel property used to conduct the farming operation;

(6) Historical performance;

(7) Farm operating plan;

(8) Loan evaluation;

(9) Supervisory plan; and

(10) Training plan.

(c) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan, a loan evaluation, and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(d) The Agency reviews the assessment to determine a borrower's progress at least annually. The review will be in the form of an office visit, field visit, letter, phone conversation, or year-end analysis, as determined by the Agency.

**§ 761.104 Developing the farm operating plan.**

(a) An applicant or borrower must submit a farm operating plan to the Agency, upon request, for loan making or servicing purposes.

(b) An applicant or borrower may request Agency assistance in developing the farm operating plan.

(c) The farm operating plan will be based on accurate and verifiable information.

(1) Historical information will be used as a guide.

(2) Positive and negative trends, mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections.

(3) Projected yields will be calculated according to the following priorities:

(i) The applicant or borrower's own production records for the previous 3 years;

(ii) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments, if available;

(iii) FSA Farm Program actual yield records;

(iv) County averages;

(v) State averages.

(4) If the applicant or borrower's production history has been substantially affected by a disaster declared by the President or designated by the Secretary of Agriculture, or the applicant or borrower has had a qualifying loss from such disaster but the farming operation was not located in a declared or designated disaster area, the applicant or borrower may:

(i) Use county average yields, or state average yields if county average yields are not available, in place of the disaster year yields; or

(ii) Exclude the production year with the lowest actual or county average yield if their yields were affected by disasters during at least 2 of the 3 years.

(d) Unit prices for agricultural commodities established by the Agency will generally be used. Applicants and borrowers that provide evidence that they will receive a premium price for a commodity may use a price above the price established by the Agency.

(e) Except as provided in paragraph (f) of this section, the applicant or borrower must sign the final farm operating plan prior to approval of any loan or servicing action.

(f) If the Agency believes the applicant or borrower's farm operating plan is inaccurate, or the information upon which it is based cannot be verified, the Agency will discuss and try to resolve the concerns with the applicant or borrower. If an agreement cannot be reached, the Agency will make loan approval and servicing determinations based on the Agency's revised farm operating plan.

### §761.105 Year-end analysis.

(a) The Agency conducts a year-end analysis at its discretion or if the borrower:

(1) Has received any direct loan, chattel subordination, or primary loan servicing action within the last year;

(2) Is financially distressed or delinquent;

(3) Has a loan deferred, excluding deferral of an installment under subpart B of part 766; or

(4) Is receiving a limited resource interest rate on any loan.

(b) To the extent practicable, the year-end analysis will be completed within 60 days after the end of the business year or farm budget planning period and must include:

(1) An analysis comparing actual income, expenses, and production to projected income, expenses, and production for the preceding production cycle; and

(2) An updated farm operating plan.

### §§761.106–761.200 [Reserved]

## Subpart D—Allocation of Farm Loan Programs Funds to State Offices

### §761.201 Purpose.

(a) This subpart addresses:

(1) The allocation of funds for direct and guaranteed FO and OL loans;

(2) The establishment of socially disadvantaged target participation rates; and

(3) The reservation of loan funds for beginning farmers.

(b) The Agency does not allocate EM loan funds to State Offices but makes funds available following a designated or declared disaster. EM loan funds are available on a first-come first-served basis.

(c) State funding information is available for review in any State Office.

### §761.202 Timing of allocations.

The Agency's National Office allocates funds for FO and OL loans to the State Offices on a fiscal year basis, as made available by the Office of Management and Budget. However, the National Office will retain control over the funds when funding or administrative constraints make allocation to State Offices impractical.

### §761.203 National reserves for Farm Ownership and Operating loans.

(a) *Reservation of funds.* At the start of each fiscal year, the National Office reserves a portion of the funds available for each direct and guaranteed loan program. These reserves enable the Agency to meet unexpected or justifiable program needs during the fiscal year.

(b) *Allocation of reserved funds.* The National Office distributes funds from the reserve to one or more State Offices to meet a program need or Agency objective.

### §761.204 Methods of allocating funds to State Offices.

FO and OL loan funds are allocated to State Offices using one or more of the following allocation methods:

(a) Formula allocation, if data, as specified in §761.205, is available to use the formula for the State.

(b) Administrative allocation, if the Agency cannot adequately meet program objectives with a formula allocation. The National Office determines the amount of an administrative allocation on a case-by-case basis.

(c) Base allocation, to ensure funding for at least one loan in each State, District, or County Office. In making a base allocation, the National Office may use criteria other than those used in the formula allocation, such as historical Agency funding information.

### § 761.205 Computing the formula allocation.

(a) The formula allocation for FO or OL loan funds is equal to:

(1) The amount available for allocation by the Agency minus the amounts held in the National Office reserve and distributed by base and administrative allocation, multiplied by

(2) The State Factor, which represents the percentage of the total amount of the funds for a loan program that the National Office allocates to a State Office.

formula allocation = (amount available for allocation − national reserve − base allocation − administrative allocation) × State Factor

(b) To calculate the State Factor, the Agency:

(1) Uses the following criteria, data sources, and weights:

| Criteria | Loan type criterion is used for | Data source | Weight for FO loans (percent) | Weight for OL loans (percent) |
|---|---|---|---|---|
| Farm operators with sales of $2,500–$39,999 and less than 200 days work off the farm. | FO and OL loans | U.S. Census of Agriculture. | 15 | 15 |
| Farm operators with sales of $40,000 or more and less than 200 days work off farm. | FO and OL loans | U.S. Census of Agriculture. | 35 | 35 |
| Tenant farm operators | FO and OL loans | U.S. Census of Agriculture. | 25 | 20 |
| 3-year average net farm income | FO and OL loans | USDA Economic Research Service. | 15 | 15 |
| Value of farm real estate assets | FO loans | USDA Economic Research Service. | 10 | N/A |
| Value of farm non-real estate assets | OL loans | USDA Economic Research Service. | N/A | 15 |

(2) Determines each State's percentage of the national total for each criterion;

(3) Multiplies the percentage for each State determined in paragraph (b)(2) of this section by the applicable weight for that criterion;

(4) Sums the weighted criteria for each State to obtain the State factor.

### § 761.206 Pooling of unobligated funds allocated to State Offices.

The Agency periodically pools unobligated FO and OL loan funds that have been allocated to State Offices. When pooling these funds, the Agency places all unobligated funds in the appropriate National Office reserve. The pooled funds may be retained in the national reserve or reallocated to the States.

### § 761.207 Distribution of loan funds by State Offices.

A State Office may distribute its allocation of loan funds to District or County level using the same allocation methods that are available to the National Office. State Offices may reserve a portion of the funds to meet unexpected or justifiable program needs during the fiscal year.

### § 761.208 Target participation rates for socially disadvantaged groups.

(a) *General.* (1) The Agency establishes target participation rates for providing FO and OL loans to members of socially disadvantaged groups.

(2) The Agency sets the target participation rates for State and County levels annually.

(3) When distributing loan funds in counties within Indian reservations, the Agency will allocate the funds on a reservation-wide basis.

(4) The Agency reserves and allocates sufficient loan funds to achieve these target participation rates. The Agency may also use funds that are not reserved and allocated for socially disadvantaged groups to make or guarantee loans to members of socially disadvantaged groups.

(b) *FO loans based on ethnicity or race.* The FO loan target participation rate based on ethnicity or race in each:

(1) State is equal to the percent of the total rural population in the State who are members of such socially disadvantaged groups.

(2) County is equal to the percent of rural population in the county who are members of such socially disadvantaged groups.

(c) *OL loans based on ethnicity or race.* The OL loan target participation rate based on ethnicity or race in each:

(1) State is equal to the percent of the total number of farmers in the State who are members of such socially disadvantaged groups.

(2) County is equal to the percent of the total number of farmers in the county who are members of socially disadvantaged ethnic groups.

(d) *Women farmers.* (1) The target participation rate for women farmers in each:

(i) State is equal to the percent of farmers in the State who are women.

(ii) County is equal to the percent of farmers in the county who are women.

(2) In developing target participation rates for women, the Agency will consider the number of women who are current farmers and potential farmers.

### § 761.209 Loan funds for beginning farmers.

Each fiscal year, the Agency reserves a portion of direct and guaranteed FO and OL loan funds for beginning farmers in accordance with section 346(b)(2) of the Act.

### § 761.210 Transfer of funds.

If sufficient unsubsidized guaranteed OL funds are available, then beginning on:

(a) August 1 of each fiscal year, the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers under the Beginning Farmer Downpayment loan program; and

(b) September 1 of each fiscal year the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers.

## PART 762—GUARANTEED FARM LOANS

Sec.

762.1–762.100 [Reserved]
762.101 Introduction.
762.102 Abbreviations and definitions.
762.103 Full faith and credit.
762.104 Appeals.
762.105 Eligibility and substitution of lenders.
762.106 Preferred and certified lender programs.
762.107–762.109 [Reserved]
762.110 Loan application.
762.111–762.119 [Reserved]
762.120 Applicant eligibility.
762.121 Loan purposes.
762.122 Loan limitations.
762.123 Insurance and farm inspection requirements.
762.124 Interest rates, terms, charges, and fees.
762.125 Financial feasibility.
762.126 Security requirements.
762.127 Appraisal requirements.
762.128 Environmental and special laws.
762.129 Percent of guarantee and maximum loss.
762.130 Loan approval and issuing the guarantee.
762.131–762.139 [Reserved]
762.140 General servicing responsibilities.
762.141 Reporting requirements.
762.142 Servicing related to collateral.
762.143 Servicing distressed accounts.
762.144 Repurchase of guaranteed portion from a secondary market holder.
762.145 Restructuring guaranteed loans.
762.146 Other servicing procedures.
762.147 Servicing shared appreciation agreements.
762.148 Bankruptcy.
762.149 Liquidation.
762.150 Interest assistance program.
762.151–762.158 [Reserved]
762.159 Pledging of guarantee.
762.160 Assignment of guarantee.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989.

SOURCE: 64 FR 7378, Feb. 12, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 762 appear at 72 FR 63297, Nov. 8, 2007.

### §§ 762.1–762.100 [Reserved]

### § 762.101 Introduction.

(a) *Scope.* This subpart contains regulations governing Operating Loans and Farm Ownership loans guaranteed by the Farm Service Agency. This subpart applies to lenders, holders, borrowers, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) *Lender list.* The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(c) *Lender classification.* Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(1) Standard Eligible Lender under § 762.105;

(2) Certified Lender, or

(3) Preferred Lender under § 762.106.

(d) *Type of guarantee.* Guarantees are available for both a loan note or a line of credit. A loan note is used for a loan of fixed amount and term. A line of credit has a fixed term, but no fixed amount. The principal amount outstanding at any time, however, may not exceed the line of credit ceiling contained in the contract. Both guarantees are evidenced by the same loan guarantee form.

(e) *Termination of loan guarantee.* The loan guarantee will automatically terminate as follows:

(1) Upon full payment of the guaranteed loan. A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee;

(2) Upon payment of a final loss claim; or

(3) Upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The loan guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### § 762.102 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

[72 FR 63297, Nov. 8, 2007]

### § 762.103 Full faith and credit.

(a) *Fraud and misrepresentation.* The loan guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) *Lender violations.* The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The loan guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The loan note guarantee is unenforceable by the lender based on a lender violation.

### § 762.104 Appeals.

(a) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

(b) The lender or Agency may request updated information from the borrower to implement an appeal decision.

(c) Appeals will be handled in accordance with parts 11 and 780 of this title.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### § 762.105 Eligibility and substitution of lenders.

(a) *General.* To participate in FSA guaranteed farm loan programs, a lender must meet the eligibility criteria in this part. The standard eligible lender must demonstrate eligibility and provide such evidence as the Agency may request.

(b) *Standard eligible lender eligibility criteria.* (1) A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested;

(2) The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

(3) A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency;

(4) The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it:

(i) Normally makes loans in the region or geographic location in which the applicant's operation being financed is located, or

(ii) Demonstrates specific expertise in making and servicing loans for the proposed operation.

(5) The lender, its officers, or agents must not be debarred or suspended from participation in Government contracts or programs or be delinquent on a Government debt.

(c) *Substitution of lenders.* A new eligible lender may be substituted for the original lender, upon the original lender's concurrence, under the following conditions:

(1) The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable.

(2) The new lender agrees in writing to:

(i) Assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan;

(ii) Execute a lender's agreement if one is not in effect;

(iii) [Reserved]

(iv) Give any holder written notice of the substitution. If the rate and terms are changed, written concurrence from the holder is required.

(3) The original lender will:

(i) Assign their promissory note, lien instruments, loan agreements, and other documents to the new lender.

(ii) If the loan is subject to an existing interest assistance agreement, submit a request for subsidy for the partial year that it has owned the loan.

(d) *Lender name or ownership changes.* (1) When a lender begins doing business under a new name or undergoes an ownership change the lender will notify the Agency.

(2) The lender's CLP or PLP status is subject to reconsideration when ownership changes.

(3) The lender will execute a new lender's agreement when ownership changes.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

### §762.106 Preferred and certified lender programs.

(a) *General.* (1) Lenders who desire PLP or CLP status must prepare a written request addressing:

(i) The States in which they desire to receive PLP or CLP status and their branch offices which they desire to be considered by the Agency for approval; and

(ii) Each item of the eligibility criteria for PLP or CLP approval in this section, as appropriate.

(2) The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

(3) The lender must send its request to the Agency State office for the State in which the lender's headquarters is located.

(4) The lender must provide any additional information requested by the Agency to process a PLP or CLP request if the lender continues with the approval process.

(b) *CLP criteria.* The lender must meet the following requirements to obtain CLP status:

(1) Qualify as a standard eligible lender under §762.105;

(2) Have a lender loss rate not in excess of the maximum CLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(3) Have proven an ability to process and service Agency guaranteed loans by showing that the lender:

(i) Submitted substantially complete and correct guaranteed loan applications; and

(ii) Serviced all guaranteed loans according to Agency regulations;

(4) Have made the minimum number of guaranteed OL, FO, or Soil and Water (SW) loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(5) Not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based upon financial condition;

(6) Designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:

(i) Have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months; and

(ii) Agree to attend Agency sponsored training each year;

(7) Use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit;

(c) *PLP criteria.* The lender must meet the following requirements to obtain PLP status:

(1) Meet the CLP eligibility criteria under this section.

(2) Have a credit management system, satisfactory to the Agency, based on the following:

(i) The lender's written credit policies and underwriting standards;

(ii) Loan documentation requirements;

(iii) Exceptions to policies;

(iv) Analysis of new loan requests;

(v) Credit file management;

(vi) Loan funds and collateral management system;

(vii) Portfolio management;

(viii) Loan reviews;

(ix) Internal credit review process;

(x) Loan monitoring system; and

(xi) The board of director's responsibilities.

(3) Have made the minimum number of guaranteed OL, FO, or SW loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(4) Have a lender loss rate not in excess of the rate of the maximum PLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(5) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(6) Show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies.

(7) Demonstrate a consistent, above average ability to service guaranteed loans based on the following:

(i) Borrower supervision and assistance;

(ii) Timely and effective servicing; and

(iii) Communication with the Agency.

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

(d) *CLP and PLP approval.* (1) If a lender applying for CLP or PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

(2) The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP or PLP program based on the information submitted in the lender application and on Agency experience.

(3) Lenders who meet the criteria will be granted CLP or PLP status for a period not to exceed 5 years.

(4) PLP status will be conditioned on the lender carrying out its credit management system as proposed in its request for PLP status and any additional loan making or servicing requirements agreed to and documented the PLP lender's agreement. If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.

(e) *Monitoring CLP and PLP lenders.* CLP and PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

(f) *Renewal of CLP or PLP status.* (1) PLP or CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's Agreement is executed.

(2) Renewal of PLP or CLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with PLP or CLP status which includes information:

(i) Updating the material submitted in the initial application; and,

(ii) Addressing any new criteria established by the Agency since the initial application.

(3) PLP or CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under paragraph (g) of this section.

(g) *Revocation of PLP or CLP status.* (1) The Agency may revoke the lender's PLP or CLP status at any time during the 5 year term for cause.

(2) Any of the following instances constitute cause for revoking or not renewing PLP or CLP status:

(i) Violation of the terms of the lender's agreement;

(ii) Failure to maintain PLP or CLP eligibility criteria. The Agency may allow a PLP lender with a loss rate which exceeds the maximum PLP loss rate, to retain its PLP status for a two-year period, if:

(A) The lender documents in writing why the excessive loss rate is beyond their control;

(B) The lender provides a written plan that will reduce the loss rate to the PLP maximum rate within two years from the date of the plan, and

(C) The Agency determines that exceeding the maximum PLP loss rate standard was beyond the control of the lender. Examples include, but are not limited to, a freeze with only local impact, economic downturn in a local area, drop in local land values, industries moving into or out of an area, loss of access to a market, and biological or chemical damage.

(D) The Agency will revoke PLP status if the maximum PLP loss rate is not met at the end of the two-year period, unless a second two year extension is granted under this subsection.

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Deficiencies that indicate an inability to process or service Agency guaranteed farm loan programs loans in accordance with this subpart;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow credit management systems (for PLP lenders) accepted by the Agency; or

(ix) Failure to comply with the reimbursement requirements of § 762.144(c)(7).

(3) A lender which has lost PLP or CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender (for former PLP and CLP lenders), or as a CLP lender (for former PLP lenders) in submitting loan guarantee requests. They may reapply for CLP or PLP status when the problem causing them to lose their status has been resolved.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 70 FR 56107, Sept. 26, 2005; 71 FR 43957, Aug. 3, 2006]

### §§ 762.107–762.109 [Reserved]

### § 762.110 Loan application.

(a) *Loans for $125,000 or less.* All lenders except PLP lenders will submit the following items:

(1) A complete application for loans of $125,000 or less must, at least, consist of:

(i) The application form;

(ii) Loan narrative;

(iii) Balance sheet;

(iv) Cash flow budget;

(v) Credit report;

(vi) A plan for servicing the loan.

(2) In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for

non-guaranteed loans of a similar type and amount.

(3) The $125,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.

(4) The Agency may require lenders with a lender loss rate in excess of the rate for CLP lenders to assemble additional documentation from paragraph (b) of this section.

(b) *Loans over $125,000.* A complete application for loans over $50,000 will consist of the items required in paragraph (a) of this section plus the following:

(1) Verification of income;

(2) Verification of debts over $1,000;

(3) Three years financial history;

(4) Three years of production history (for standard eligible lenders only);

(5) Proposed loan agreements; and,

(6) If construction or development is planned, a copy of the plans, specifications, and development schedule.

(c) *Applications from PLP lenders.* Notwithstanding paragraphs (a) and (b) of this section, a complete application for PLP lenders will consist of at least:

(1) An application form;

(2) A loan narrative; and

(3) Any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.

(d) *Submitting applications.* (1) All lenders must compile and maintain in their files a complete application for each guaranteed loan. See paragraphs (a), (b), and (c) of this section.

(2) The Agency will notify CLP lenders which items to submit to the Agency.

(3) PLP lenders will submit applications in accordance with their agreement with the Agency for PLP status.

(4) CLP and PLP lenders must certify that the required items, not submitted, are in their files.

(5) The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.

(e) *Incomplete applications.* If the lender does not provide the information needed to complete its application by the deadline established in an Agency request for the information, the application will be considered withdrawn by the lender.

(f) *Conflict of interest.* (1) When a lender submits the application for a guaranteed loan, the lender will inform the Agency in writing of any relationship which may cause an actual or potential conflict of interest.

(2) Relationships include:

(i) The lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners having a financial interest (other than lending relationships in the normal course of business) in the applicant or borrower.

(ii) The applicant or borrower, a relative of the applicant or borrower, anyone residing in the household of the applicant or borrower, any officer, director, stockholder or other owner of the applicant or borrower holds any stock or other evidence of ownership in the lender.

(iii) The applicant or borrower, a relative of the applicant or borrower, or anyone residing in the household of the applicant or borrower is an Agency employee.

(iv) The officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the applicant or borrower.

(v) The lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee.

(3) The lender must furnish additional information to the Agency upon request.

(4) The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.

(g) *Market placement program.* When the Agency determines that a direct applicant or borrower may qualify for guaranteed credit, the Agency may

submit the applicant or borrower's financial information to one or more guaranteed lenders. If a lender indicates interest in providing financing to the applicant or borrower through the guaranteed loan program, the Agency will assist in completing the application for a guarantee.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 7695, Feb. 18, 2003; 72 FR 63297, Nov. 8, 2007]

### §§ 762.111–762.119 [Reserved]

### § 762.120 Applicant eligibility.

Applicants must meet all of the following requirements to be eligible for a guaranteed OL or a guaranteed FO:

(a) *Agency loss.* (1) Except as provided in paragraph (a)(2) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Act by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the Act; discharge in bankruptcy; or through payment of a guaranteed loss claim on:

(i) More than three occasions on or prior to April 4, 1996; or

(ii) Any occasion after April 4, 1996.

(2) The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(i) Received a write-down under section 353 of the Act;

(ii) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(iii) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period for a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(b) *Delinquent Federal debt.* The applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. (Any debt under the Internal Revenue Code of 1986 may be considered by the lender in determining cash flow and creditworthiness.)

(c) *Outstanding judgments.* The applicant, and anyone who will execute the promissory note, have no outstanding unpaid judgment obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(d) *Citizenship.* (1) The applicant must be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws.

(2) United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(e) *Legal capacity.* The applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.

(f) *False or misleading information.* The applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

(g) *Credit history.* (1) The individual or entity applicant and all entity members must have acceptable credit history demonstrated by debt repayment.

(2) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(3) Unacceptable credit history will not include:

(i) Isolated instances of late payments which do not represent a pattern

and were clearly beyond their control; or,

(ii) Lack of credit history.

(h) *Test for credit.* (1) The applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(2) The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit.

(3) Ownership interests in property and income received by an individual or entity applicant, and any entity members as individuals will be considered when evaluating the availability of other credit to the applicant.

(i) *For OLs:*

(1) The individual or entity applicant must be an operator of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to operate, and own if the entity is also an owner, a farm in the State or States in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity must operate the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.

(j) *For FOs:*

(1) The individual must be the operator and owner of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to own and operate a farm in the state or states in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm and at least one member of the entity or the entity must own the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the family farm.

(k) *For entity applicants.* Entity applicants must meet the following additional eligibility criteria:

(1) Each entity member's ownership interest may not exceed the family farm definition limits;

(2) The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

(i) All of the entity members are related by blood or marriage;

(ii) All of the members are or will be operators of the entity; and,

(iii) The majority interest holders of the entity must meet the requirements of paragraphs (d), (f), (g), and (i) through (j) of this section;

(3) The entity must be controlled by farmers engaged primarily and directly in farming or ranching in the United States after the loan is made; and

(4) The entity members are not themselves entities.

(l) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 62223, Nov. 3, 2003; 69 FR 5262, Feb. 4, 2004; 72 FR 63297, Nov. 8, 2007]

### § 762.121 Loan purposes.

(a) *Operating Loan purposes.* (1) Loan funds disbursed under an OL guarantee may only be used for the following purposes:

(i) Payment of costs associated with reorganizing a farm to improve its profitability;

(ii) Purchase of livestock, including poultry, and farm equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(iii) Payment of annual farm operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family subsistence;

(iv) Payment of scheduled principal and interest payments on term debt

provided the debt is for authorized FO or OL purposes;

(v) Other farm and ranch needs;

(vi) Payment of costs associated with land and water development for conservation or use purposes;

(vii) Refinancing indebtedness incurred for any authorized OL purpose, when the lender and applicant can demonstrate the need to refinance;

(viii) Payment of loan closing costs;

(ix) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury; and

(x) Payment of training costs required or recommended by the Agency.

(2) Loan funds under a line of credit may be advanced only for the following purposes:

(i) Payment of annual operating expenses, family subsistence, and purchase of feeder animals;

(ii) Payment of current annual operating debts advanced for the current operating cycle; (Under no circumstances can carry-over operating debts from a previous operating cycle be refinanced);

(iii) Purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle;

(iv) Payment of scheduled, non-delinquent, term debt payments provided the debt is for authorized FO or OL purposes.

(v) Purchase of cooperative stock for credit, production, processing or marketing purposes; and

(vi) Payment of loan closing costs.

(b) *Farm ownership loan purposes.* Guaranteed FO are authorized only to:

(1) Acquire or enlarge a farm; examples include, but are not limited to, providing down payments, purchasing easements for the applicant's portion of land being subdivided, and participating in the beginning farmer downpayment FO program under part 764 of this chapter;

(2) Make capital improvements; examples include, but are not limited to, the construction, purchase, and improvement of a farm dwelling, service buildings and facilities that can be made fixtures to the real estate, (Capital improvements to leased land may be financed subject to the limitations in §762.122);

(3) Promote soil and water conservation and protection; examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways;

(4) Pay closing costs, including but not limited to, purchasing stock in a cooperative and appraisal and survey fees; and

(5) Refinancing indebtedness incurred for authorized FO and OL purposes, provided the lender and applicant demonstrate the need to refinance the debt.

(c) *Highly erodible land or wetlands conservation.* Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. A decision by the Agency to reject an application for this reason may be appealable. An appeal questioning whether the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the agency's appeal procedures.

(d) *Judgment debts.* Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### §762.122 Loan limitations.

(a) *Dollar limits.* The Agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in §761.8 of this chapter.

(b) *OL term limitations.* (1) No guaranteed OL shall be made to any applicant after the 15th year that a applicant, or any individual signing the promissory note, received a direct or guaranteed OL.

(2) Notwithstanding paragraph (c)(1) of this section, if a borrower had any combination of direct or guaranteed

OL closed in 10 or more prior calendar years prior to October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years. Once determined eligible, a loan or line of credit may be approved for any authorized term.

(c) *Leased land.* When FO funds are used for improvements to leased land the terms of the lease must provide reasonable assurance that the applicant will have use of the improvement over its useful life, or provide compensation for any unexhausted value of the improvement if the lease is terminated.

(d) *Tax-exempt transactions.* The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under section 103 of the Internal Revenue Code of 1986. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

(e) *Floodplain restrictions.* The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard area maps unless flood insurance is available and purchased.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 72 FR 63297, Nov. 8, 2007]

### § 762.123 Insurance and farm inspection requirements.

(a) *Insurance.* (1) Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

(2) By loan closing, applicants must either:

(i) Obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by part 402 of this title, or

(ii) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under part 764 of this chapter is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.

(3) Applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA flood hazard area maps and if flood insurance is available.

(4) Insurance, including crop insurance, must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

(b) *Farm inspections.* Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005; 72 FR 63297, Nov. 8, 2007]

### § 762.124 Interest rates, terms, charges, and fees.

(a) *Interest rates.* (1) The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

(2) If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average agricultural loan customer, but the frequency of change must be specified in the loan or line of credit instrument.

(3) Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of

average yield data, or documented administrative differential rate schedule formulas used by the lender.

(4) Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate but limited to paragraph (a)(3) of this section.

(5) The lender and borrower may collectively obtain a temporary reduction in the interest rate through the interest assistance program in accordance with §762.150.

(b) *OL terms.* (1) Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

(2) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement. Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

(3) All advances on a line of credit must be made within 5 years from the date of the Loan Guarantee.

(c) *FO terms.* Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(d) *Balloon installments under loan note guarantee.* Balloon payment terms are permitted on FO or OL subject to the following:

(1) Extended repayment schedules may include equal, unequal, or balloon installments if needed on any guaranteed loan to establish a new enterprise, develop a farm, or recover from a disaster or an economical reversal.

(2) Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan.

(3) The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

(e) *Charges and Fees.* (1) The lender may charge the applicant and borrower fees for the loan provided they are no greater than those charged to unguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

(2) Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

(3) Lenders may not charge a loan origination and servicing fee greater than 1 percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO for beginning farmers under part 764 of this chapter.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 17358, Apr. 9, 2007; 72 FR 63297, Nov. 8, 2007]

### §762.125 Financial feasibility.

(a) *General.* (1) Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during PLP certification.

(2) The applicant's proposed operation must project a feasible plan as defined in §762.102(b).

(3) For standard eligible lenders, the projected income and expenses of the borrower and operation used to determine a feasible plan must be based on the applicant's proven record of production and financial management.

(4) For CLP lenders, the projected income and expenses of the borrower and the operation must be based on the applicant's financial history and proven record of financial management.

(5) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the applicant, and the Agency will be used.

(6) The cash flow budget analyzed to determine a feasible plan must represent the predicted cash flow of the operating cycle.

(7) Lenders must use price forecasts that are reasonable and defensible. Sources must be documented by the lender and acceptable to the Agency.

(8) When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue.

(9) The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation. Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to: raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes; welding shops; boarding horses; and riding stables.

(10) When the applicant has or will have a cash flow budget developed in conjunction with a proposed or existing Agency direct loan, the two cash flow budgets must be consistent.

(b) *Estimating production.* (1) Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing cash flow budgets.

(2) Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

(3) For existing farmers, actual production for the past 3 years will be utilized.

(4) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the applicant, and the Agency will be used.

(5) When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(6) When the applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(i) County average yields are used for the disaster year if the applicant's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.

(ii) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the applicant's yields were affected by disasters at least 2 of the previous 5 consecutive years.

(c) *Refinancing.* Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the applicant's operation that have been identified, can be corrected, and the operation returned to a sound financial basis.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

### § 762.126 Security requirements.

(a) *General.* (1) The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

(2) The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

(b) *Guaranteed and unguaranteed portions.* (1) All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

(2) The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or

certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.

(c) *Identifiable security*. The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

(d) *Type of security*. (1) Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

(2) For loans with terms greater than 7 years, a lien must be taken on real estate.

(3) Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

(4) The lender or Agency may require additional personal and corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

(e) *Lien position*. All guaranteed loans will be secured by the best lien obtainable. Provided that:

(1) Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender.

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

(3) When taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.

(f) Additional security, or any loan of $10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search. This exception to title clearance will not apply when land is to be purchased.

(g) *Multiple owners*. If security has multiple owners, all owners must execute the security documents for the loan.

(h) *Exceptions*. The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collection of the loan will not be impaired.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005]

### § 762.127 Appraisal requirements.

(a) *General*. The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security. Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

(b) *Exception*. Notwithstanding other provisions of this section, an appraisal is not required for any additional security, or for loans of $50,000 or less if a strong equity position exists.

(c) *Chattel appraisals*. A current appraisal (not more than 12 months old) of primary chattel security is generally required on all loans. An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a guarantee is requested late in the current production year and actual yields can be reasonably estimated. The appraised value of chattel property will be based on public sales of the same, or similar,

property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used. Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information. Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(d) *Real estate appraisals.* A current real estate appraisal is required when real estate will be primary security. Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraisal if not completed within the past 12 months.

(1) Appraiser qualifications. On loan transactions of $250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate the market value of agricultural property. On loan transactions greater than $250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a State certified general appraiser.

(2) Appraisals. Real estate appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports, as defined in the Uniform Standards of Professional Appraisal Practice, are not acceptable.

[64 FR 7378, Feb. 12, 1999, as amended at 64 FR 62568, Nov. 17, 1999; 65 FR 14433, Mar. 17, 2000]

### § 762.128 Environmental and special laws.

(a) *Environmental requirements.* The requirements found in part 1940, subpart G, of this title must be met for guaranteed OL and FO. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) The Agency Official's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

(c) *Special requirements.* Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the applicant's case file.

(1) A determination must be made as to whether there are any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

(2) The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

(3) The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and part 1940, subpart G.

(4) The applicant must certify they will not violate the provisions of § 363 of the Act, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

(5) All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959, or similar documentation, approved for use by the Agency, supplemented as necessary by the ASTM phase I environmental site assessments form.

(d) *Equal opportunity and nondiscrimination.* (1) With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

(2) Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and nondiscrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

(e) *Other Federal, State and local requirements.* Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### § 762.129 Percent of guarantee and maximum loss.

(a) *General.* The percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee.

(b) *Exceptions.* The guarantee will be issued at 95 percent in any of the following circumstances:

(1) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency loan, a weighted percentage of a guarantee will be provided;

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) When a guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer whose farm land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

(c) *CLP and PLP guarantees.* All guarantees issued to CLP or PLP lenders will not be less than 80 percent.

(d) *Maximum loss.* The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion including:

(1) The pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement;

(2) Any loan subsidy due and owing;

(3) The pro rata share of principal and interest indebtedness on secured protective and emergency advances made in accordance with this subpart; and

(4) Principal and interest indebtedness on recapture debt pursuant to a shared appreciation agreement. Provided that the lender has paid the Agency its pro rata share of the recapture amount due.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 7695, Feb. 18, 2003; 72 FR 63297, Nov. 8, 2007]

**§ 762.130 Loan approval and issuing the guarantee.**

(a) *Processing timeframes.* (1) Standard Eligible Lenders. Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.

(2) CLP and PLP lenders.

(i) Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt.

(ii) For PLP lenders, if this time frame is not met, the proposed guaranteed loan will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

(3) Complete applications. For purposes of determining the application processing timeframes, an application will be not be considered complete until all information required to make an approval decision, including the information for an environmental review, is received by the Agency.

(4) The Agency will confirm the date an application is received with a written notification to the lender.

(b) *Funding preference.* Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved applicants, applications that have been approved will be placed on a preference list according to the date of receipt of a complete application. If approved applications have been received on the same day, the following will be given priority:

(1) An application from a veteran

(2) An application from an Agency direct loan borrower

(3) An application from a applicant who:

(i) Has a dependent family,

(ii) Is an owner of livestock and farm implements necessary to successfully carry out farming operations, or

(iii) Is able to make down payments.

(4) Any other approved application.

(c) *Conditional commitment.* (1) The lender must meet all of the conditions specified in the conditional commitment to secure final Agency approval of the guarantee.

(2) The lender, after reviewing the conditions listed on the conditional commitment, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the applicant of their appeal rights.

(d) *Lender requirements prior to issuing the guarantee.* (1) Lender certification. The lender will certify as to the following on the appropriate Agency form:

(i) No major changes have been made in the lender's loan or line of credit conditions and requirements since submission of the application (except those approved in the interim by the Agency in writing);

(ii) Required hazard, flood, crop, worker's compensation, and personal life insurance (when required) are in effect;

(iii) Truth in lending requirements have been met;

(iv) All equal employment and equal credit opportunity and nondiscrimination requirements have been or will be met at the appropriate time;

(v) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained, on any acquired property that cannot be covered initially under State law;

(vi) The borrower has marketable title to the collateral owned by the borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by the Agency. When required, an assignment on all USDA crop and livestock program payments has been obtained;

(vii) When required, personal, joint operation, partnership, or corporate guarantees have been obtained;

(viii) Liens have been perfected and priorities are consistent with requirements of the conditional commitment;

(ix) Loan proceeds have been, or will be disbursed for purposes and in amounts consistent with the conditional commitment and as specified on the loan application. In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the conditional commitment and line of credit agreements;

(x) There has been no material adverse change in the borrower's condition, financial or otherwise, since submission of the application; and

(xi) All other requirements specified in the conditional commitment have been met.

(2) Inspections. The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those with the lender, are solely for the benefit of the Agency. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections for any purpose.

(3) Execution of lender's agreement. The lender must execute the Agency's lender's agreement and deliver it to the Agency.

(4) Closing report and guarantee fees.

(i) The lender must complete an Agency closing report form and return it to the Agency along with any guarantee fees.

(ii) Guarantee fees are 1 percent and are calculated as follows: Fee=Loan Amount×% Guaranteed×.01. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

(iii) The following guaranteed loan transactions are not charged a fee:

(A) Loans involving interest assistance;

(B) Loans where a majority of the funds are used to refinance an Agency direct loan; and

(C) Loans to beginning farmers involved in the direct beginning farmer downpayment program.

(e) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages), provided:

(1) The forms meet Agency requirements;

(2) Documents comply with State law and regulation;

(3) The principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment;

(4) The note is executed by the individual liable for the loan. For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired; and

(5) When the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) *Replacement of loan guarantee, or assignment guarantee agreement.* If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### §§ 762.131–762.139 [Reserved]

### § 762.140 General servicing responsibilities.

(a) *General.* (1) Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee or secured party of record.

(2) The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

(b) *Borrower supervision.* The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for unauthorized purposes.

(2) Ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this

part. Any violations which indicate non-compliance on the part of the borrower must be reported, in writing, to both the Agency and the borrower.

(3) Ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm.

(4) Receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Performing an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include an analysis of the borrower's balance sheet. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform an annual analysis in accordance with the requirements established in the lender's agreement.

(ii) For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

(iii) An account of the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(c) *Monitoring of development.* The lender's responsibilities regarding the construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the lender's lien or result in a different lien priority from that proposed in the request for guarantee.

(d) *Loan installments.* When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]

### § 762.141 Reporting requirements.

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

(a) When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.

(b) All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year;

(c) CLP lenders also must provide the following:

(1) A written summary of the lender's annual analysis of the borrower's operation. This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

(2) For lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, the standard eligible lender also will provide:

(1) Borrower's balance sheet, and income and expense statement for the previous year.

(2) For lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle. The standard eligible lender must receive approval from the Agency before advancing future years' funds.

(3) An annual farm visit report or collateral inspection.

(e) PLP lenders will submit additional reports as required in their lender's agreement.

(f) A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

### §762.142 Servicing related to collateral.

(a) *General.* The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

(1) Obtain income and insurance assignments when required.

(2) Ensure the borrower has or obtains marketable title to the collateral.

(3) Inspect the collateral as often as deemed necessary to properly service the loan.

(4) Ensure the borrower does not convert loan security.

(5) Ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral.

(6) Ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(7) Ensure taxes, assessments, or ground rents against or affecting the collateral are paid.

(8) Ensure adequate insurance is maintained.

(9) Ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.

(b) *Partial releases.* (1) A lender may release guaranteed loan security without FSA concurrence as follows:

(i) When the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities. In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.

(ii) The security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security.

(iii) The security item has no present or prospective value.

(2) A partial release of security may be approved in writing by the Agency upon the lender's request when:

(i) Proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released.

(ii) Security will be released outright with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current appraisal of the security.

(iii) Significant income generating property will not be released unless it is being replaced and business assets will not be released for use as a gift or any similar purpose.

(iv) Agency concurrence is provided in writing to the lender's written request. Standard eligible lenders and CLP lenders will submit the following to the Agency:

(A) A current balance sheet on the borrower; and

(B) A current appraisal of the security. Based on the level of risk and estimated equity involved, the Agency will determine what security needs to be appraised. Any required security appraisals must meet the requirements of §762.127; and

(C) A description of the purpose of the release; and

(D) Any other information requested by the Agency to evaluate the proposed servicing action.

(3) The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

(4) PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.

(c) *Subordinations.* (1) The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:

(i) To permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products;

(ii) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring;

(iii) When the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected; or

(iv) To permit a line of credit to be advanced for annual operating expenses.

(2) The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met:

(i) The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.

(ii) The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.

(3) The lender may not subordinate its interest in property which secures a guaranteed loan except as follows:

(i) The lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses; or

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

(iii) The Agency's national office may provide an exception to the subordination prohibition if such action is in the Agency's best interest. However, in no case can the loan made under the subordination include tax exempt financing.

(d) *Transfer and assumption.* Transfers and assumptions are subject to the following conditions:

(1) For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing.

(2) For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110, including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.

(3) PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.

(4) Any required security appraisals must meet the requirements of § 762.127.

(5) The Agency will review, approve or reject the request in accordance with the time frames in § 762.130.

(6) The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a applicant under this part.

(7) The lender will use its own assumption agreements or conveyance instruments, providing they are legally sufficient to obligate the transferee for the total outstanding debt. The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

(8) The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.

(9) The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.

(10) The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of §762.146(c) are met.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 69 FR 44579, July 27, 2004]

### §762.143 Servicing distressed accounts.

(a) A borrower is in default when 30 days past due on a payment or in violation of provisions of the loan documents.

(b) In the event of a borrower default, SEL and CLP lenders will:

(1) Report to the Agency in accordance with §762.141.

(2) Determine whether it will repurchase the guaranteed portion from the holder in accordance with §762.144, if the guaranteed portion of the loan was sold on the secondary market.

(3) Arrange a meeting with the borrower within 15 days of default (45 days after payment due date for monetary defaults) to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements and any other applicable loan documents.

(i) The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best financial information available.

(ii) The lender or the borrower may request the attendance of an Agency official. If requested, the Agency official will assist in developing solutions to the borrower's financial problems.

(iii) The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status completed after the meeting. The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with rescheduling under §762.145(b).

(iv) The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.

(v) The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the interest assistance programs has been determined by the Agency. If the lender or the borrower does not wish to consider servicing options under this section, this should be documented, and liquidation under §762.149 should begin.

(vi) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with §762.145 prior to the payment coming due.

(c) PLP lenders will service defaulted loans according to their lender's agreement.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

### §762.144 Repurchase of guaranteed portion from a secondary market holder.

(a) *Request for repurchase.* The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when:

(1) The borrower has not made a payment of principal and interest due on the loan for at least 60 days; or

(2) The lender has failed to remit to the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

(b) *Repurchase by the lender.* (1) When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

(2) The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

(3) The guarantee will not cover separate servicing fees that the lender accrues after the repurchase.

(c) *Repurchase by the Agency.* (1) If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

(2) With its demand on the Agency, the holder must include:

(i) A copy of the written demand made upon the lender.

(ii) Originals of the guarantee and note properly endorsed to the Agency, or the original of the assignment of guarantee.

(iii) A copy of any written response to the demand of the holder by the lender.

(iv) An account to which the Agency can forward the purchase amount via electronic funds transfer.

(3) The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

(i) Upon request by the Agency, the lender must furnish upon Agency request a current statement, certified by a bank officer, of the unpaid principal and interest owed by the borrower and the amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency. The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved.

(iii) In the case of a request for Agency purchase, the Agency will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

(4) At the time of purchase by the Agency, the original assignment of guarantee will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

(5) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the lender's agreement or guarantee; nor does the purchase waive any of the Agency's rights against the lender.

(6) The Agency succeeds to all rights of the holder under the Guarantee including the right of set-off against the lender.

(7) Within 180 days of the Agency's purchase, the lender will reimburse the Agency the amount of repurchase, with accrued interest, through one of the following ways:

(i) By liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds; or

(ii) Paying the Agency the full amount the Agency paid to the holder plus any accrued interest.

(8) The lender will be liable for the purchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.

(9) If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

(10) The Agency may sell a purchased guaranteed loan on a non-recourse basis if it determines that selling the portion of the loan that it holds is in the Government's best interest. A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender;

(d) *Repurchase for servicing.* (1) If, due to loan default or imminent loan restructuring, the lender determines that repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

(2) The lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing.

(3) The holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and holder.

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]

### §762.145 Restructuring guaranteed loans.

(a) *General.* (1) To restructure guaranteed loans standard eligible lenders must:

(i) Obtain prior written approval of the Agency for all restructuring actions; and,

(ii) Provide the items in paragraph (b) and (e) of this section to the Agency for approval.

(2) If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

(3) To restructure guaranteed loans CLP lenders must:

(i) Obtain prior written approval of the Agency only for debt write down under this section.

(ii) Submit all calculations required in paragraph (e) of this section for debt writedown.

(iii) For restructuring other than write down, provide FSA with a certification that each requirement of this section has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.

(4) PLP lenders will restructure loans in accordance with their lender's agreement.

(5) All lenders will submit copies of any restructured notes or lines of credit to the Agency.

(b) *Requirements.* For any restructuring action, the following conditions apply:

(1) The borrower meets the eligibility criteria of §762.120, except the provisions regarding prior debt forgiveness and delinquency on a federal debt do not apply.

(2) The borrower's ability to make the amended payment is documented by the following:

(i) A feasible plan as defined in §762.102(b).

(ii) Current financial statements from all liable parties.

(iii) Verification of nonfarm income.

(iv) Verification of all debts of $1,000 or more.

(v) Applicable credit reports.

(vi) Financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.

(3) A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the

projected value of the real estate and/or equipment security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For equipment security, a current appraisal is required. The lender is required to project the security value of the equipment at the time the balloon payment is due based on the remaining life of the equipment, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum term of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.102(b), must be projected for when installments are scheduled to increase.

(5) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due.

(6) The lender may capitalize the outstanding interest when restructuring the loan as follows:

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 761.8 of this chapter.

(ii) When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling may be approved without capitalization of the amount that exceeds the limit. Noncapitalized interest may be scheduled for repayment over the term of the rescheduled note.

(iii) Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.

(iv) The Agency will execute a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original guarantee as an addendum.

(v) Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. When a loan is restructured using a balloon payment the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

(8) Any holder agrees to any changes in the original loan terms. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.

(9) After a guaranteed loan is restructured, the lender must provide the Agency with a copy of the restructured promissory note.

(c) *Rescheduling.* The following conditions apply when a guaranteed loan is rescheduled or reamortized:

(1) Payments will be rescheduled within the following terms:

(i) FO and existing SW may be amortized over the remaining term of the note or rescheduled with an uneven payment schedule. The maturity date cannot exceed 40 years from the date of the original note.

(ii) OL notes must be rescheduled over a period not to exceed 15 years from the date of the rescheduling. An OL line of credit may be rescheduled over a period not to exceed 7 years from the date of the rescheduling or 10 years from the date of the original

note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.

(2) The interest rate for a rescheduled loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

(3) A new note is not necessary when rescheduling occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an allonge or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

(d) *Deferrals.* The following conditions apply to deferrals:

(1) Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.

(2) The principal portion of the payment may be deferred either in whole or in part.

(3) Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.

(4) There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.

(e) *Debt writedown.* The following conditions apply to debt writedown:

(1) A lender may only write down a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan as defined in §762.102(b).

(2) The lender will request other creditors to negotiate their debts before a writedown is considered.

(3) The borrower cannot develop a feasible plan after consideration is given to rescheduling and deferral under this section.

(4) The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.

(5) The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL note and no shorter than 20 years for FO, unless required to be shorter by §762.145(c)(1)(i) and (ii).

(6) No further advances may be made on a line of credit that is written down.

(7) Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance.

(8) The writedown is based on writing down the shorter-term loans first.

(9) When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security and maintain lien priority.

(10) The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.

(11) The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate.

(i) The lender will attach the original agreement to the restructured loan document.

(ii) The lender will provide the Agency a copy of the executed agreement, and

(iii) Security instruments must ensure future collection of any appreciation under the agreement.

(12) The lender will prepare and submit the following to the Agency:

(i) A current appraisal of all security in accordance with §762.127.

(ii) A completed report of loss on the appropriate Agency form for the proposed writedown loss claim.

(iii) Detailed writedown calculations as follows:

(A) Calculate the present value.

(B) Determine the net recovery value.

(C) If the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration. If the present value equals or exceeds the net recovery value, the debt may be written down to the present value.

(iv) The lender will make any adjustment in the calculations as requested by the Agency.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 69 FR 44579, July 27, 2004; 70 FR 56107, Sept. 26, 2005; 72 FR 17358, Apr. 9, 2007]

### § 762.146 Other servicing procedures.

(a) *Additional loans and advances.* (1) Notwithstanding any provision of this section, the PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.

(2) SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's loan or line of credit agreement.

(3) In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:

(i) The loan funds to be advanced are for authorized operating loan purposes;

(ii) The financial benefit to the lender and the Government from the advance will exceed the amount of the advance; and

(iii) The loss of crops or livestock is imminent unless the advance is made.

(4) Protective advance requirements are found in § 762.149.

(b) *Release of liability upon withdrawal.* An individual who is obligated on a guaranteed loan may be released from liability by a lender, with the written consent of the Agency, provided the following conditions have been met:

(1) The individual to be released has withdrawn from the farming or ranching operation;

(2) A divorce decree or final property settlement does not hold the withdrawing party responsible for the loan payments;

(3) The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued;

(4) The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made; and

(5) Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability.

(6) The remaining liable party projects a feasible plan (see § 762.102(b)).

(c) *Release of liability after liquidation.* After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if;

(1) The Agency agrees to the release in writing;

(2) The lender documents its consideration of the following factors concerning the borrower or guarantors:

(i) The likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt;

(ii) The prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt;

(iii) Whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security;

(iv) The availability of other income or assets which are not security;

(v) The possibility that assets have been concealed or improperly transferred;

(vi) The effect of other guarantors on the loan; and

(vii) Cash consideration or other collateral in exchange for the release of liability.

(3) The lender will use its own release of liability documents.

(d) *Interest rate changes.* (1) The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

(2) If the loan has been sold on the secondary market, the lender must repurchase the loan or obtain the holder's written consent.

(3) To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective allonge or amendment to the existing note.

(4) If a new note is taken, it will be attached to and refer to the original note.

(5) The lender will inform the Agency of the rate change.

(e) *Consolidation.* Two or more Agency guaranteed loans may be consolidated, subject to the following conditions:

(1) The borrower must project a feasible plan after the consolidation. See §762.102(b) for definition of feasible plan.

(2) Only OL may be consolidated.

(3) Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit.

(4) Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.

(5) Guaranteed loans made prior to October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991.

(6) OL secured by real estate or with an outstanding interest assistance agreement or shared appreciation agreement cannot be consolidated.

(7) A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

(8) The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

(9) The Agency approves the consolidation by executing a modification of guarantee. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated

(10) Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

### §762.147 Servicing shared appreciation agreements.

(a) *Lender responsibilities.* The lender is responsible for:

(1) Monitoring the borrower's compliance with the shared appreciation agreement;

(2) Notifying the borrower of the amount of recapture due; and,

(3) Beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement; and

(4) Reimbursing the Agency for its pro-rata share of recapture due.

(b) *Recapture.* (1) Recapture of any appreciation of real estate security will take place at the end of the term of the agreement, or sooner if the following occurs:

(i) On the conveyance of the real estate security (or a portion thereof) by the borrower.

(A) If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with §762.141(b).

(B) Transfer of title to the spouse of the borrower on the death of such borrower will not be treated as a conveyance under the agreement.

(ii) On repayment of the loan; or

(iii) If the borrower ceases farming.

(2) Calculating recapture.

(i) The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of writedown, as shown on the shared appreciation agreement.

(ii) Security values will be determined through appraisals obtained by the lender and meeting the requirements of § 762.127.

(iii) All appraisal fees will be paid by the lender.

(iv) The amount of recapture will not exceed the amount of writedown shown on the shared appreciation agreement.

(v) If recapture is triggered within 4 years of the date of the shared appreciation agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(vi) If recapture is triggered after 4 years from the date of the shared appreciation agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(3) Servicing recapture debt.

(i) If recapture is triggered under the shared appreciation agreement and the borrower is unable to pay the recapture in a lump sum, the lender may:

(A) Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt, plus pay all other obligations. In such case, the recapture debt will not be covered by the guarantee;

(B) Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the guarantee; or

(C) Service the account in accordance with § 762.149.

(ii) If recapture is triggered, and the borrower is able but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.

(4) Paying the Agency. Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

**§ 762.148 Bankruptcy.**

(a) *Lender responsibilities.* The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. The lender's responsibilities include, but are not limited to:

(1) Filing a proof of claim where required and all the necessary papers and pleadings;

(2) Attending, and where necessary, participating in meetings of the creditors and court proceedings;

(3) Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral;

(4) Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible;

(5) When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.

(6) Monitor confirmed plans under chapters 11, 12 and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan; and

(7) Keeping the Agency regularly informed in writing on all aspects of the proceedings.

(i) The lender will submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.

(ii) The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.

(b) *Bankruptcy expenses.* (1) Reorganization.

(i) Expenses, such as legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency.

(ii) Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(2) Liquidation expenses in bankruptcy.

(i) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases.

(ii) In-house expenses are not considered customary liquidation expenses, may not be deducted from collateral proceeds, and are not covered by the guarantee.

(c) *Estimated loss claims in reorganization*—(1) *At confirmation.* The lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:

(i) The estimated loss payment will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.

(ii) The lender will submit supporting documentation for the loss claim, and any additional information requested by the Agency, including justification for the legal fees included on the claim.

(iii) The estimated loss payment may be revised as consistent with a court-approved reorganization plan.

(iv) Protective advances made and approved in accordance with §762.149 may be included in an estimated loss claim associated with a reorganization, if:

(A) They were incurred in connection with the initiation of liquidation action prior to bankruptcy filing; or

(B) The advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case, or failure of the borrower to maintain the security.

(2) Interest only losses. The lender may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following:

(i) The loss claims may cover interest losses sustained as a result of a court-ordered, permanent interest rate reduction.

(ii) The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.

(iii) If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.

(3) Actual loss.

(i) Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

(ii) If the actual loss sustained is greater than the prior estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.

(iii) If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(4) Payment to holder. In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization plan.

(d) *Liquidation under the bankruptcy code.* (1) Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the bankruptcy code, or a liquidation plan under chapter 11, the lender must proceed according to the liquidation procedures of this part. For purposes of calculating the time frames required under §762.149 of this part, for a borrower who is or will be liquidated, the date the borrower files for bankruptcy protection under Chapter 7 shall be the date of the decision to liquidate.

(2) If the property is abandoned by the trustee, the lender will conduct the liquidation according to §762.149.

(3) Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with

the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 762.149(a)(vi).

[64 FR 7378, Feb. 12, 1999, as amended at 71 FR 43957, Aug. 3, 2006]

### § 762.149 Liquidation.

(a) *Mediation.* When it has been determined that default cannot be cured through any of the servicing options available, or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:

(1) Participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program;

(2) Consider private mediation services in those States which do not have a mandatory farmer-creditor mediation program; and

(3) Not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part. Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.

(b) *Liquidation plan.* If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following:

(1) Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:

(i) Current balance sheets from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice;

(ii) A proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment;

(A) If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted.

(B) Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2);

(iii) An independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127 and a calculation of the net recovery value of the security as defined in § 762.102. The appraisal requirement may be waived by the Agency in the following cases:

(A) The bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value;

(B) The lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment; or

(C) A purchase offer has already been received for more than the debt;

(iv) An estimate of time necessary to complete the liquidation;

(v) An estimated loss claim if the liquidation period is expected to exceed 90 days.

(vi) An estimate of reasonable liquidation expenses; and

(vii) An estimate of any protective advances.

(2) PLP lenders will submit a liquidation plan as required by their lender's agreement.

(c) *Agency approval of the liquidation plan.* (1) CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.

(2) If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.

(3) At its option, the Agency may liquidate the guaranteed loan as follows:

(i) Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The

Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined; and

(ii) If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.

(d) *Estimated loss claims.* An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

(1) The Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security; and

(2) The lender generally will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. The following exceptions apply:

(i) If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate,

(ii) In the case of a Chapter 7 bankruptcy, in cases where the lender filed an estimated loss claim, the Agency will pay the lender interest which accrues during and up to 45 days after the date of discharge on the portion of the chattel only secured debt that was estimated to be secured but upon final liquidation was found to be unsecured, and up to 90 days after the date of discharge on the portion of real estate secured debt that was estimated to be secured but was found to be unsecured upon final disposition,

(iii) The Agency will pay the lender interest which accrues during and up to 90 days after the time period the lender is unable to dispose of acquired property due to state imposed redemption rights on any unsecured portion of the loan during the redemption period, if an estimated loss claim was paid by the Agency during the liquidation action.

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

(e) *Protective advances.* (1) Prior written authorization from the Agency is required for all protective advances in excess of $5,000 for CLP lenders and $3,000 for standard eligible lenders. The dollar amount of protective advances allowed for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the lender's agreement.

(2) The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances as allowed in this part, plus interest that accrues on the protective advances.

(3) Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

(4) Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

(5) Legal fees are not a protective advance.

(6) Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Agency.

(7) Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.

(8) Protective advances must not be made in lieu of additional loans.

(f) *Unapproved loans or advances.* The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior to, and to the detriment of, the guaranteed loan.

(g) *Acceleration.* (1) If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.

(2) The loan cannot be accelerated until after the borrower has been considered for interest assistance and the conclusion of mandatory mediation in accordance with §762.149.

(3) The lender will submit a copy of the acceleration notice or other document to the Agency.

(h) *Foreclosure.* (1) The lender is responsible for determining the necessary parties to any foreclosure action, or who should be named on a deed of conveyance taken in lieu of foreclosure.

(2) When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

(3) When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

(i) *Final loss claims.* (1) Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

(2) If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1). Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a final loss claim.

(3) The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds;

(ii) An accounting of the disposition of loan security and its proceeds;

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total; and

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

(6) The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

(i) A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs. Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid.

(ii) Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often required so as to ensure its maintenance.

(7) Losses will not be reduced for the following:

(i) Servicing deficiencies that did not contribute materially to the dollar amount of the loss.

(ii) Unaccounted security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

(8) Default interest, late charges, and loan servicing fees are not payable under the loss claim.

(9) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security.

(10) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment, plus interest at the note rate from the date of the estimated loss payment.

(11) The lender will return the original guarantee marked paid after receipt of a final loss claim.

(j) *Future Recovery.* The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee, in accordance with the lender's agreement, until the account is paid in full or otherwise satisfied.

(k) *Overpayments.* The lender will repay any final loss overpayment determined by the Agency upon request.

(l) *Electronic funds transfer.* The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

(m) *Establishment of Federal debt.* Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date the final loss claim is paid.

[64 FR 7378, Feb. 12, 1999, as amended at 67 FR 44016, July 1, 2002; 69 FR 44580, July 27, 2004; 71 FR 43957, Aug. 3, 2006]

### §762.150 Interest assistance program.

(a) *Requests for interest assistance.* In addition to the loan application items required by §762.110, to apply for interest assistance the lender's cash flow budget for the guaranteed applicant must reflect the need for interest assistance and the ability to cash flow with the subsidy. Interest assistance is available only on new guaranteed Operating Loans (OL).

(b) *Eligibility requirements.* The lender must document that the following conditions have been met for the applicant to be eligible for interest assistance:

(1) A feasible plan cannot be achieved without interest assistance, but can be achieved with interest assistance.

(2) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.

(3) The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.

(4) The borrower, including members of an entity borrower, does not own any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and interest assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance.

(5) A borrower may only receive interest assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members. Beginning farmers and ranchers, as defined in §762.102, are excluded from this requirement.

(c) *Maximum assistance.* The maximum total guaranteed OL debt on which a borrower can receive interest assistance is $400,000, regardless of the number of guaranteed loans outstanding. This is a lifetime limit.

(d) *Maximum time for which interest assistance is available.* (1) A borrower may only receive interest assistance for one 5-year period. The term of the interest assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the applicant, including any entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.

(2) Beginning farmers and ranchers, as defined in §762.102, however, may be considered for two 5-year periods. The applicant must meet the definition of a beginning farmer and meet the other eligibility requirements outlined in paragraph (b) of this section at the onset of each 5-year period. A needs test will be completed in the fifth year

of IA eligibility for beginning farmers, to determine continued eligibility for a second 5-year period.

(3) Notwithstanding the limitation of paragraph (d)(1) of this section, a new interest assistance agreement may be approved for eligible borrowers to provide interest assistance through June 8, 2009, provided the total period does not exceed 10 years from the effective date of the original interest assistance agreement.

(e) *Multiple loans.* In the case of a borrower with multiple guaranteed loans with one lender, interest assistance can be applied to each loan, only to one loan or any distribution the lender selects, as necessary to achieve a feasible plan, subject to paragraph (c) of this section.

(f) *Terms.* The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in § 762.124. An OL for the purpose of providing annual operating and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and/or livestock products which will serve as security for the loan. An OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement, or the life of the security, whichever is less.

(g) *Rate of interest.* The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average agricultural loan customer.

(h) *Agreement.* The lender and borrower must execute an interest assistance agreement as prescribed by the Agency.

(i) *Interest assistance claims and payments.* To receive an interest assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. The following conditions apply:

(1) Interest assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. For loans with a note rate less than four (4) percent, interest assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.

(2) The lender may select at the time of loan closing the date that they wish to receive an interest assistance payment. That date will be included in the interest assistance agreement.

(i) The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12-month period, unless there is a lender substitution during the 12-month period in accordance with this section.

(ii) In the event of liquidation, the final interest assistance claim will be submitted with the estimated loss claim or the final loss claim if an estimated loss claim was not submitted. Interest will not be paid beyond the interest accrual cutoff dates established in the loss claims according to § 762.149(d)(2).

(3) A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.

(4) All claims will be supported by detailed calculations of average daily principal balance during the claim period.

(5) Requests for continuation of interest assistance for agreements dated prior to June 8, 2007 will be supported by the lender's analysis of the applicant's farming operation and need for continued interest assistance as set out in their Interest Assistance Agreements. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance, including a detailed income and expense statement.

(iii) A current balance sheet.

(iv) A cash-flow budget for the period being planned. A monthly cash-flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash-flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash-flow budget.

(6) Interest Assistance Agreements dated June 8, 2007 or later do not require a request for continuation of interest assistance. The lender will only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

(7) Lenders may not charge or cause a borrower with an interest assistance agreement to be charged a fee for preparation and submission of the items required for an annual interest assistance claim.

(j) *Transfer, consolidation, and writedown.* Loans covered by interest assistance agreements cannot be consolidated. Such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with §762.120 and §762.150(b) and at least one entity member was liable for the debt on the effective date of the interest assistance agreement. Interest assistance will be discontinued as of the date of any writedown on a loan covered by an interest assistance agreement.

(k) *Rescheduling and deferral.* When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with §762.145. For Interest Assistance Agreements dated June 8, 2007 or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

(l) *Bankruptcy.* In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.

(m) *Termination of interest assistance payments.* Interest assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the interest assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the interest assistance.

(n) *Excessive interest assistance.* Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(o) *Condition for cancellation.* The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender or borrower have actual knowledge at the time the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(p) *Substitution.* If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final interest assistance payment calculated through the effective date of the substitution. This final claim will be submitted for processing at the time of the substitution.

(1) Interest assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (i) of this section to receive their initial and subsequent interest assistance payments.

(q) *Exception Authority*. The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest assistance if it is in the best interest of the Government and is not inconsistent with other applicable law.

[72 FR 17358, Apr. 9, 2007]

### §§ 762.151–762.158 [Reserved]

### § 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.

[70 FR 56107, Sept. 26, 2005]

### § 762.160 Assignment of guarantee.

(a) The following general requirements apply to assigning guaranteed loans:

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The Guarantee or Assignment of Guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

[70 FR 56107, Sept. 26, 2005]

## PART 763 [Reserved]

# PART 764—DIRECT LOAN MAKING

## Subpart A—Overview

Sec.
764.1 Introduction.
764.2 Abbreviations and definitions.
764.3–764.50 [Reserved]

## Subpart B—Loan Application Process

764.51 Loan application.
764.52 Processing an incomplete application.
764.53 Processing the complete application.
764.54 Preferences when there is limited funding.
764.55–764.100 [Reserved]

## Subpart C—Requirements for All Direct Program Loans

764.101 General eligibility requirements.
764.102 General limitations.
764.103 General security requirements.
764.104 General real estate security requirements.
764.105 General chattel security requirements.
764.106 Exceptions to security requirements.
764.107 General appraisal requirements.
764.108 General insurance requirements.
764.109–764.150 [Reserved]

## Subpart D—Farm Ownership Loan Program

764.151 Farm Ownership loan uses.
764.152 Eligibility requirements.
764.153 Limitations.
764.154 Rates and terms.
764.155 Security requirements.
764.156–764.200 [Reserved]

## Subpart E—Beginning Farmer Downpayment Loan Program

764.201 Beginning Farmer Downpayment loan uses.
764.202 Eligibility requirements.
764.203 Limitations.
764.204 Rates and terms.
764.205 Security requirements.
764.206–764.250 [Reserved]

## Subpart F—Operating Loan Program

764.251 Operating loan uses.
764.252 Eligibility requirements.
764.253 Limitations.
764.254 Rates and terms.
764.255 Security requirements.
764.256–764.300 [Reserved]

## Subpart G—Youth Loan Program

764.301 Youth loan uses.
764.302 Eligibility requirements.
764.303 Limitations.
764.304 Rates and terms.
764.305 Security requirements.
764.306–764.350 [Reserved]

## Subpart H—Emergency Loan Program

764.351 Emergency loan uses.
764.352 Eligibility requirements.
764.353 Limitations.
764.354 Rates and terms.
764.355 Security requirements.
764.356 Appraisal and valuation requirements.
764.357–764.400 [Reserved]

## Subpart I—Loan Decision and Closing

764.401 Loan decision.
764.402 Loan closing.
764.403–764.450 [Reserved]

## Subpart J—Borrower Training and Training Vendor Requirements

764.451 Purpose.
764.452 Borrower training requirements.
764.453 Agency waiver of training requirements.
764.454 Actions that an applicant must take when training is required.
764.455 Potential training vendors.
764.456 Applying to be a vendor.
764.457 Vendor requirements.
764.458 Vendor approval.
764.459 Evaluation of borrower progress.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted.

## Subpart A—Overview

### §764.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for making direct FLP loans.

(b) *Types of loans.* The Agency makes the following types of loans:

(1) FO, including Beginning Farmer Downpayment loans;

(2) OL, including Youth loans; and

(3) EM.

### §764.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in §761.2 of this chapter.

**§§ 764.3–764.50 [Reserved]**

## Subpart B—Loan Application Process

### § 764.51 Loan application.

(a) A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.

(b) A complete loan application, except as provided in paragraphs (c) through (e) of this section, will include:

(1) The completed Agency application form;

(2) If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

(v) In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

(4) The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than three years;

(5) The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

(6) Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

(7) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(8) Verification of all non-farm income;

(9) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(10) A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;

(11) Payment to the Agency for ordering a credit report on the applicant;

(12) Verification of all debts;

(13) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan; and

(14) For EM loans, a statement of loss or damage on the appropriate Agency form.

(c) For a Lo-Doc OL request, the applicant must:

(1) Be current on all payments to all creditors including the Agency (if an Agency borrower);

(2) Have not received primary loan servicing on any FLP debt within the past 5 years; and

(3) Meet one of the following sets of criteria:

(i) The loan requested is $50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than $100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

(4) Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(d) For a youth loan request:

(1) The applicant must submit items (1), (7), and (9) of paragraph (b) of this section.

(2) Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section.

(3) The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(e) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

### §764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

### §764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

(a) Consider the loan application in the order received, based on the date the application was determined to be complete.

(b) Provide written notice to the applicant that the application is complete.

(c) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

(d) If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with §762.110(g) of this chapter.

(e) In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

(f) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

### §764.54 Preferences when there is limited funding.

(a) *First priority*. When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities*. If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war;

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a downpayment; or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

### §§764.55–764.100 [Reserved]

## Subpart C—Requirements for All Direct Program Loans

### §764.101 General eligibility requirements.

The following requirements must be met unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *Controlled substances*. The applicant, and anyone who will sign the promissory note, must not be ineligible for loans as a result of a conviction for

controlled substances according to 7 CFR part 718 of this chapter.

(b) *Legal capacity*. The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship*. The applicant, and anyone who will sign the promissory note, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

(d) *Credit history*. The applicant must have acceptable credit history demonstrated by debt repayment.

(1) As part of the credit history, the Agency will determine whether the applicant will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(2) When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history:

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR part 766.

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) ''No history'' of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the applicant's control; or the result of a refusal to make full payment because of defective goods or services or other justifiable dispute relating to the purchase or contract for goods or services.

(e) *Availability of credit elsewhere*. The applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

(2) Property interests, income, and significant non-essential assets.

(f) *Not in delinquent status on Federal debt*. As provided in 31 CFR part 285, except for EM loan applicants, the applicant, and anyone who will sign the promissory note, must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.

(g) *Outstanding judgments*. The applicant, and anyone who will sign the promissory note, must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(h) *Federal crop insurance violation*. The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *Managerial ability*. The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

(2) On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last 5 years.

(j) *Borrower training.* The applicant must agree to meet the training requirements in subpart J of this part.

(k) *Operator of a family farm.* (1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

### §764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through H of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in §761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in §761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

### §764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through H of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart H of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for beginning farmer downpayment loans and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(e) The Agency will take a lien on all assets that are not essential to the

farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of $5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section. This requirement does not apply to beginning farmer downpayment loans and youth loans.

### § 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing to:

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not encumber or cause any liens to be levied against the property;

(iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;

(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(6) If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

(c) *Tribal lands held in trust or restricted.* The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the reports and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

**§764.105 General chattel security requirements.**

The same chattel may be pledged as security for more than one direct or guaranteed loan.

**§764.106 Exceptions to security requirements.**

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(c) When the Agency cannot obtain a valid lien;

(d) When the property is the applicant's personal residence and appurtenances and:

(1) They are located on a separate parcel; and

(2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;

(e) When the property is subsistence livestock, cash, working capital accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(f) On marginal land and timber that secures an outstanding ST loan.

**§764.107 General appraisal requirements.**

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with §761.7 of this chapter.

(b) *Establishing value for chattels.* The value of chattels will be established as follows:

(1) *Annual production.* The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.

(2) *Livestock and equipment.* The value of livestock and equipment will be established by an appraisal completed in accordance with §761.7 of this chapter.

**§764.108 General insurance requirements.**

The applicant must obtain and maintain insurance, equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:

(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary in the mortgagee loss payable clause.

(b) Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary in the mortgagee loss payable clause.

(c) Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.

(d) Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.

**§§ 764.109–764.150 [Reserved]**

## Subpart D—Farm Ownership Loan Program

### § 764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

(b) Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

### § 764.152 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:

(1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;

(2) The entity must be authorized to own and operate the farm in the State in which the farm is located;

(3) If the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member of the entity must operate the farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must own and operate the farm.

(d) And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(e) And anyone who will sign the promissory note, must satisfy at least one of the following conditions:

(1) Meet the definition of a beginning farmer;

(2) Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed;

(3) Have never received a direct FO loan.

### § 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations established at § 764.102;

(b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

### § 764.154 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

(2) The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

(4) The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.

(b) *Terms.* The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

**§ 764.155 Security requirements.**

An FO loan must be secured:

(a) In accordance with §§ 764.103 through 764.106;

(b) At a minimum, by the real estate being purchased or improved.

**§§ 764.156–764.200 [Reserved]**

## Subpart E—Beginning Farmer Downpayment Loan Program

**§ 764.201 Beginning Farmer Downpayment loan uses.**

Beginning Farmer Downpayment loan funds may be used to partially finance the purchase of a family farm by an eligible beginning farmer.

**§ 764.202 Eligibility requirements.**

The applicant must:

(a) Comply with the general eligibility requirements established at § 764.101 and the FO eligibility requirements of § 764.152; and

(b) Be a beginning farmer.

**§ 764.203 Limitations.**

(a) The applicant must:

(1) Comply with the general limitations established at § 764.102; and

(2) Provide a minimum downpayment of 10 percent of the purchase price of the farm.

(b) The purchase price or appraised value of the farm, whichever is lower, must not exceed $250,000.

(c) Beginning Farmer Downpayment loans will not exceed 40 percent of the lesser of the purchase price or appraised value of the farm to be acquired.

(d) Financing provided by the Agency and all other creditors must not exceed 90 percent of the lesser of the purchase price or appraised value of the farm and may be guaranteed by the Agency under part 762 of this chapter.

**§ 764.204 Rates and terms.**

(a) *Rates.* The interest rate for Beginning Farmer Downpayment loans shall be 4 percent.

(b) *Terms.* (1) The Agency schedules repayment of Beginning Farmer Downpayment loans in equal, annual installments over a term not to exceed 15 years.

(2) The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 15 years of the loan.

**§ 764.205 Security requirements.**

A Beginning Farmer Downpayment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

**§§ 764.206–764.250 [Reserved]**

## Subpart F—Operating Loan Program

**§ 764.251 Operating loan uses.**

(a) Except as provided in paragraph (b), OL loan funds may only be used for:

(1) Costs associated with reorganizing a farm to improve its profitability;

(2) Purchase of livestock, including poultry, farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(3) Farm operating expenses, including, but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;

(4) Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(5) Other farm needs;

(6) Costs associated with land and water development, use, or conservation;

(7) Loan closing costs;

(8) Costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or noncompliance with the standards will cause substantial economic injury;

(9) Borrower training costs required or recommended by the Agency;

(10) Refinancing farm-related debts other than real estate to improve the

farm's profitability provided the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA;

(11) Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.

(b) Lo-Doc funds approved under:

(1) Section 764.51(c)(3)(i) may be used for any OL purpose except for refinancing debt under paragraph (a)(10);

(2) Section 764.51(c)(3)(ii) may only be used for expenses under paragraph (a)(3).

### § 764.252 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101.

(b) And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

(c) And anyone who will sign the promissory note, may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other applicable requirements under this part, if the applicant:

(1) Received a write-down under section 353 of the Act;

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

(3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within 3 years after the designation of such emergency meet this exception.

(d) And in the case of an entity, the entity must be:

(1) Controlled by farmers engaged primarily and directly in farming in the United States; and

(2) Authorized to operate the farm in the State in which the farm is located.

(e) And anyone who will sign the promissory note, may close an OL loan in no more than 7 calendar years, either as an individual or as a member of an entity, except as provided in paragraphs (e)(1) through (4) of this section. The years may be consecutive or nonconsecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation. The following exceptions are applicable.

(1) This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer.

(2) This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

(3) If the applicant, and anyone who will sign the promissory note, has closed direct OL loans in four or more previous calendar years as of April 4, 1996, the applicant is eligible to close OL loans in any three additional years after that date.

(4) On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

(i) Has a financially viable operation;

(ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and

(iii) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

### § 764.253 Limitations.

The applicant must comply with the general limitations established at § 764.102.

### § 764.254 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 18 months from the date of the note.

(ii) The term of the loan may exceed 18 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:

(i) Must have adequate security at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans;

(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan;

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

### § 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with §§ 764.103 through 764.106.

(b) By a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

### §§ 764.256–764.300 [Reserved]

## Subpart G—Youth Loan Program

### § 764.301 Youth loan uses.

Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4–H, FFA, or a similar organization.

### § 764.302 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101(a) through (g);

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be at least 10 but not yet 21 years of age at the time the loan is closed;

(d) Must reside in a rural area, city or town with a population of 50,000 or fewer people;

(e) Must be recommended and continuously supervised by a project advisor, such as a 4–H Club advisor, a vocational teacher, a county extension agent, or other agriculture-related organizational sponsor; and

(f) Must obtain a written recommendation and consent from a parent or guardian if the applicant has not reached the age of majority under state law.

**§ 764.303 Limitations.**

(a) The applicant must comply with the general limitations established at § 764.102.

(b) The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed $5,000.

**§ 764.304 Rates and terms.**

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is not available for Youth loans.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* Youth loan terms are the same as for an OL established at § 764.254(b).

**§ 764.305 Security requirements.**

A first lien will be obtained on property or products acquired or produced with loan funds.

**§§ 764.306–764.350 [Reserved]**

## Subpart H—Emergency Loan Program

**§ 764.351 Emergency loan uses.**

(a) *Physical losses*—(1) *Real estate losses.* EM loan funds for real estate physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) For any FO purpose, as specified in § 764.151, except subparagraph (e) of that section;

(ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* EM loan funds for chattel physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources (e.g., fees for legal, architectural, and other technical services, but not fees for agricultural management consultation, or preparation of Agency forms);

(iii) Repair or replace household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Pay essential family living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock, or losses to stored crops held for sale; and

(vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing; or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

(b) *Production losses.* EM loan funds for production losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:

(1) Pay costs associated with reorganizing the farm to improve its profitability except that such costs must not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or noncompliance with the standards will cause substantial economic injury;

(4) Pay borrower training costs required or recommended by the Agency;

(5) Pay essential family living expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

(7) Replace lost working capital.

**§ 764.352 Eligibility requirements.**

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) Must be an established farmer;

(c) Must be the owner-operator or tenant-operator as follows:

(1) For a loan made under § 764.351(a)(1), must have been:

(i) The owner-operator of the farm at the time of the disaster; or

(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;

(2) For a loan made under § 764.351(a)(2) or (b), must have been the operator of the farm at the time of the disaster; and

(3) In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located;

(d) Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

(e) And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

(1) In the case of a loan in excess of $300,000, two written declinations of credit are required;

(2) In the case of a loan of $300,000 or less, one written declination of credit is required; and

(3) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(g) Must submit an application to be received by the Agency no later than 8 months after the date the disaster is declared or designated in the county of the applicant's operation.

(h) For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, which comprises a basic part of an applicant's total farming operation.

(i) For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(j) Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

(2) The individual applicant, or all owners of a entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(k) Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.

**§ 764.353 Limitations.**

(a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (c) of this section.

(c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:

(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;

(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(3) Add the value of replacement livestock and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

(5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed $20,000; and

(6) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless:

(1) The physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance; or

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;

(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;

(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(iv) Meets all other requirements for the loan.

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

### § 764.354 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including, but not limited to, assets with an expected life between one and 7 years) may not exceed 7 years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

### § 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106;

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(d) For loans over $25,000, title clearance is required when real estate is taken as security.

(e) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

### § 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records

of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

**§§ 764.357–764.400 [Reserved]**

## Subpart I—Loan Decision and Closing

**§ 764.401 Loan decision.**

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in §761.8 of this chapter;

(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in §761.8 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturn of an Agency decision by appeal.* If an FLP loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

(2) Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the Agency determines the loan can be repaid. The new farm operating plan must reflect any financial issues resolved in the appeal.

(3) Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

**§764.402 Loan closing.**

(a) *Signature requirements.* Signatures on loan documents are required as follows:

(1) For individual applicants, only the applicant is required to sign the promissory note.

(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(3) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(b) *Payment of fees.* The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;

(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.

(d) *Real estate-secured loans.* (1) The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

(i) For loans of $10,000 or less;

(ii) As provided in §764.355 for EM loans;

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

(2) The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(3) The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:

(i) Be licensed in the state where the loan will be closed;

(ii) Not be debarred or suspended from participating in any Federal programs;

(iii) Maintain liability insurance;

(iv) Have a fidelity bond that covers all employees with access to loan funds;

(v) Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;

(vi) Not represent both the buyer and seller in the transaction;

(vii) Not be related as a family member or business associate with the applicant; and

(viii) Act promptly to provide required services.

(e) *Disbursement of funds.* (1) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(2) If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information for the Agency to reconfirm approval and proceed with loan closing.

(3) The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer

process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to subpart B of part 761 of this chapter when these processes are not practicable.

**§§ 764.403–764.450 [Reserved]**

## Subpart J—Borrower Training and Training Vendor Requirements

### § 764.451 Purpose.

The purpose of production and financial management training is to help an applicant develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the operation; and

(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

### § 764.452 Borrower training requirements.

(a) The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the applicant has previously satisfied the training requirements. In the case of an entity:

(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.

(c) When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR part 761 subpart C reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.

(g) The Agency will provide written notification of required training or waiver of training.

### § 764.453 Agency waiver of training requirements.

(a) The applicant must request the waiver in writing.

(b) The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 and the Agency determines that additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of those individuals when determining whether to waive training requirements.

### § 764.454 Actions that an applicant must take when training is required.

(a) *Deadline for completion of training.* (1) If the Agency requires an applicant to complete training, at loan closing

the applicant must agree in writing to complete all required training within 2 years.

(2) The Agency will grant a one-year extension to complete training if the applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.

(b) *Arranging training with a vendor.* The applicant must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) The payment of training fees is an authorized use of OL funds.

(3) The Agency is not a party to fee or other agreements between the applicant and the vendor.

(d) *Evaluation of a vendor.* Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

### § 764.455 Potential training vendors.

The Agency will contract for training services with State or private providers of production and financial management training services.

### § 764.456 Applying to be a vendor.

(a) A vendor for borrower training services must apply to the Agency for approval.

(b) The vendor application must include:

(1) A sample of the course materials and a description of the vendor's training methods;

(2) Specific training objectives for each section of the course;

(3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;

(4) A list of instructors and their qualifications;

(5) The criteria by which additional instructors will be selected;

(6) The proposed locations where training will take place;

(7) The cost per participant, including cost for additional members of a farming operation;

(8) The minimum and maximum class size;

(9) The vendor's experience in developing and administering training to farmers;

(10) The monitoring and quality control methods the vendor will use;

(11) The policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A plan of how the needs of applicants with physical, mental, or learning disabilities will be met; and

(13) A plan of how the needs of applicants who do not speak English as their primary language will be met.

### § 764.457 Vendor requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:

(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;

(2) Maintain and use a financial management information system to make financial decisions;

(3) Understand and use an income statement;

(4) Understand and use a balance sheet;

(5) Understand and use a cash flow budget; and

(6) Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.

(c) *Curriculum.* At least one of the following subjects must be covered:

(1) Business planning courses, covering general goal setting, risk management, and planning.

(2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.

(3) Crop and livestock production courses focusing on improving the profitability of the farm.

(d) *Instructor qualifications.* All instructors must have:

(1) Sufficient knowledge of the material and experience in adult education;

(2) A bachelor's degree or comparable experience in the subject area to be taught; and

(3) A minimum of 3 years experience in conducting training courses or teaching.

### § 764.458 Vendor approval.

(a) *Agreement to conduct training.* (1) Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for 3 years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving the Agency a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

(i) A request to renew the agreement;

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

(2) The Agency will review renewal requests in accordance with § 764.457.

### § 764.459 Evaluation of borrower progress.

(a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

| Score | Criteria used to determine score | Agency consideration |
|---|---|---|
| 1 | If the borrower:<br>• Attended sessions as agreed,<br>• Satisfactorily completed all assignments, and<br>• Demonstrated an understanding of the course material.. | Training requirement associated with course is complete. |
| 2 | If the borrower:<br>• Attended sessions as agreed, and<br>• Attempted to complete all assignments, but<br>• Does not demonstrate an understanding of the course material.. | Training requirement associated with couse is complete. Additional Agency supervision may be necessary. |
| 3 | If the borrower did not:<br>• Attend sessions as agreed, or<br>• Attempt to complete assignments, or<br>• Otherwise make a good faith effort to complete the training.. | Training requirement associated with course is not complete. The borrower is ineligible for future direct loans until the training is completed. |

# PART 765—DIRECT LOAN SERVICING—REGULAR

Sec.

## Subpart A—Overview

765.1 Introduction.
765.2 Abbreviations and definitions.
765.3–765.50 [Reserved]

## Subpart B—Borrowers with Limited Resource Interest Rate Loans

765.51 Annual review.
765.52–765.100 [Reserved]

## Subpart C—Borrower Graduation

765.101 Borrower graduation requirements.
765.102 Borrower noncompliance with graduation requirements.
765.103 Transfer and assignment of Agency liens.
765.104—765.150 [Reserved]

## Subpart D—Borrower Payments

765.151 Handling payments.
765.152 Types of payments.
765.153 Application of payments.
765.154 Distribution of payments.
765.155 Final loan payments.
765.156–765.200 [Reserved]

## Subpart E—Protecting the Agency's Security Interest

765.201 General policy.
765.202 Borrower responsibilities.
765.203 Protective advances.
765.204 Notifying potential purchasers.
765.205 Subordination of liens.
765.206 Junior liens.
765.207 Conditions for severance agreements.
765.208–765.250 [Reserved]

## Subpart F—Required Use and Operation of Agency Security

765.251 General.
765.252 Lease of security.
765.253 Ceasing to operate security.
765.254–765.300 [Reserved]

## Subpart G—Disposal of Chattel Security

765.301 General.
765.302 Use and maintenance of the agreement for the use of proceeds.
765.303 Use of proceeds from chattel security.
765.304 Unapproved disposition.
765.305 Release of security interest.
765.306–765.350 [Reserved]

## Subpart H—Partial Release of Real Estate Security

765.351 Requirements to obtain Agency consent.
765.352 Use of proceeds.
765.353 Determining market value.
765.354–765.400 [Reserved]

## Subpart I—Transfer of Security and Assumption of Debt

765.401 Conditions for transfer of real estate and chattel security.
765.402 Transfer of security and loan assumption on same rates and terms.
765.403 Transfer of security to and assumption of debt by eligible applicants.
765.404 Transfer of security to and assumption of debt by ineligible applicants.
765.405 Payment of costs associated with transfers.
765.406 Release of transferor from liability.
765.407–765.450 [Reserved]

## Subpart J—Deceased Borrowers

765.451 Continuation of FLP debt and transfer of security.
765.452 Borrowers with Non-program loans.
765.453–765.500 [Reserved]

## Subpart K—Exception Authority

765.501 Agency exception authority.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63309, Nov. 8, 2007, unless otherwise noted.

# Subpart A—Overview

### §765.1 Introduction.

(a) *Purpose.* This part describes the policies for servicing direct FLP loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

(b) *Servicing actions.* Servicing actions described in this part include:

(1) Limited resource reviews;

(2) Graduation to commercial credit;

(3) Application of payments;

(4) Maintaining and disposing of security;

(5) Transfer of security and assumption of debt; and

(6) Servicing accounts of deceased borrowers.

(c) *Loans covered.* The Agency services direct FLP loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.

### § 765.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

### §§ 765.3–765.50 [Reserved]

## Subpart B—Borrowers With Limited Resource Interest Rate Loans

### § 765.51 Annual review.

(a) A borrower with limited resource interest rate loans is required to provide the Agency annually the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with § 761.105 of this chapter.

(b) If the borrower's farm operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with a limited resource interest rate until:

(1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or

(2) The interest rate is equal to the interest rate currently in effect for the type of loan.

(c) Except as provided in paragraph (d) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:

(1) Purchases items not planned during the term of the loan;

(2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition;

(3) Ceases farming, as described in § 765.253; or

(4) Is ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not change the interest rate during the deferral period.

### § 765.52–765.100 [Reserved]

## Subpart C—Borrower Graduation

### § 765.101 Borrower graduation requirements.

(a) In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

(1) The borrower has the ability to obtain credit from other sources; and

(2) Adequate credit is available from other sources at reasonable rates and terms.

(b) The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

(c) The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition.

(d) The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.

(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

(1) Apply for a loan from the interested lender within 30 days of notice; or

(2) Seek guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(f) The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

### §765.102 Borrower noncompliance with graduation requirements.

Borrower failure to fulfill all graduation requirements within the time-period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR part 766.

### §765.103 Transfer and assignment of Agency liens.

The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.

### §§765.104–765.150 [Reserved]

## Subpart D—Borrower Payments

### §765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks, cash, and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

(b) *Crediting account.* The Agency credits the borrower's account as of the date the Agency receives payment.

### §765.152 Types of payments.

(a) *Regular payments.* Regular payments are derived from, but are not limited to:

(1) The sale of normal income security;

(2) The sale of farm products;

(3) Lease income, including mineral lease signing bonus;

(4) Program or disaster-related disbursements from USDA or crop insuranceentities; and

(5) Non-farm income.

(b) *Extra payments.* Extra payments are derived from any ofthe following:

(1) Sale of chattel security other than normal income security;

(2) Sale of real estate security;

(3) Refinancing of FLP debt;

(4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;

(5) Any transaction that results in a loss in the value of any Agency basic security;

(6) Refunds of duplicate disaster program benefits to be applied on an EM loan; or

(7) Refunds of unused loan funds.

(c) *Payments from sale of real estate.* Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the FLP loans will be adequately secured after the transaction.

### §765.153 Application of payments.

(a) *Regular payments.* A regular payment is credited to a scheduled installment on program and non-program loans. Regular payments are applied to loans in the following order:

(1) Annual operating loan;

(2) Delinquent FLP installments, paying least secured loans first;

(3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;

(4) Any future installments due.

(b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

### §765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

(a) Recoverable costs and protective advances plus interest;

(b) Deferred non-capitalized interest;

(c) Accrued deferred interest;

(d) Interest accrued to date of payment; and

(e) Loan principal.

### §765.155 Final loan payments.

(a) *General.* (1) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at

the time payment is made, if the borrower makes a final payment by one of the following methods:

(i) Cash;

(ii) U.S. Treasury check;

(iii) Cashier's check; or

(iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instruments have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than $10, the borrower must request a refund from the Agency in writing. Overpayments of $10 or more automatically will be refunded by the Agency.

(d) *Underpayments.* If an Agency miscalculation of a final payment amount results in an underpayment, the Agency may collect all account balances resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956.

**§§ 765.156–765.200 [Reserved]**

## Subpart E—Protecting the Agency's Security Interest

**§ 765.201 General policy.**

All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.

**§ 765.202 Borrower responsibilities.**

The borrower must:

(a) Comply with all provisions of the loan agreements;

(1) Non-compliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;

(2) Borrower non-compliance will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;

(b) Maintain, protect, and account for all security;

(c) Pay the following, unless State law requires the Agency to pay:

(1) Fees for executing, filing or recording financing statements, continuation statements or other security instruments; and

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.

**§ 765.203 Protective advances.**

When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

(a) Maintain abandoned security property;

(b) Preserve inadequately maintained security;

(c) Pay real estate taxes and assessments;

(d) Pay property, hazard, or flood insurance;

(e) Pay harvesting costs;

(f) Maintain Agency security instruments;

(g) Pay ground rents;

(h) Pay expenses for emergency measures to protect the Agency's collateral; and

(i) Protect the Agency from actions by third parties.

**§ 765.204 Notifying potential purchasers.**

(a) *States with Central Filing System (CFS).* The Agency participates and complies with central filing systems in States where CFS has been organized. In a State with a CFS, the Agency is

not required to additionally notify potential purchasers that the Agency has a lien on a borrower's chattel security, unless specifically required by State law.

(b) *States without CFS.* In a State without CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of borrowers to potential purchasers upon request.

**§765.205 Subordination of liens.**

(a) *Borrower application requirements.* The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:

(1) Completed Agency application for subordination form;

(2) A current financial statement, including, in the case of an entity, financial statements from all entity members;

(3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(4) Verification of all non-farm income;

(5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(6) Verification of all debts.

(b) *Real estate security.* For loans secured by real estate, the Agency will approve a request for subordination if all of the following conditions are met:

(1) The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;

(2) The loan will be used for an authorized loan purpose or is made in conjunction with a guaranteed loan;

(3) The credit is essential to the farming operation, and the borrower cannot obtain the credit without a subordination;

(4) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;

(5) The FLP loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;

(6) The borrower is not able to graduate;

(7) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it is needed for the entity member to finance a separate farming operation, provided the subordination does not cause the unpaid principal and interest on the FLP loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718 of this chapter;

(10) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in subpart G of 7 CFR part 1940;

(11) There is no other subordination outstanding with another lender in connection with the same security;

(12) The subordination is limited to a specific amount; the loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

(13) In the case of real property purchase or exchange, the Agency will obtain a valid mortgage and the required lien position on the real property. The Agency will require title clearance and loan closing for the property in accordance with §764.402 of this chapter;

(14) Any planned development of real estate security will be performed as directed by the creditor, approved by the Agency, and will comply with the terms and conditions of §761.10 of this chapter;

(15) Subordinations of SAA mortgages may only be approved when there

is no increase in the debt which is prior to the SAA debt; and

(16) If a borrower has only a Non-program loan, the Agency does not permit subordination. The Agency may subordinate Non-program security when it is also security for a program loan with the same borrower in accordance with this section.

(c) *Chattel security.* (1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(1) through (12) of this section.

(2) The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:

(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;

(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and

(iii) The subordination meets the conditions under paragraphs (b)(1) through (12) of this section.

(d) *Appraisals.* An appraisal of the property that secures the FLP loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 of this chapter.

### § 765.206 Junior liens.

(a) *General policy.* The borrower will not give a lien on Agency security without the consent of the Agency. Failure to obtain Agency consent will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests.

(b) *Conditions for consent.* The Agency will consent to the terms of a junior lien if all of the following conditions are met:

(1) The borrower's ability to make scheduled loan payments is not jeopardized;

(2) The borrower provides the Agency a copy of the farm operating plan submitted to the junior lienholder, and the plan is consistent with the Agency operating plan;

(3) The total debt against the security does not exceed the security's market value;

(4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;

(5) The borrower is unable to graduate; and

(6) The junior lien will not otherwise adversely impact the Agency's financial interests.

### § 765.207 Conditions for severance agreements.

For loans secured by real estate, a borrower may request Agency consent to a severance agreement or similar instrument so that future chattel acquired by the borrower will not become part of the real estate securing the FLP debt. The Agency will consent to severance agreements if all of the following conditions are met:

(a) The financing arrangements are in the financial interest of the Agency and the borrower;

(b) The transaction will not adversely affect the Agency's security position;

(c) The borrower is unable to graduate;

(d) The transaction will not jeopardize the borrower's ability to pay all outstanding debts to the Agency and other creditors; and

(e) The property acquired is consistent with authorized loan purposes.

### §§ 765.208–765.250 [Reserved]

## Subpart F—Required Use and Operation of Agency Security

### § 765.251 General.

(a) A borrower is required to be the operator of Agency security in accordance with loan purposes, loan agreements, and security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253.

### §765.252 Lease of security.

(a) *Real estate leases.* The borrower may lease real estate security provided the following conditions are met:

(1) The Agency approves the borrower's request;

(2) The term of consecutive leases does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage;

(3) The lease does not contain an option to purchase; and

(4) The requirements of §765.253 have been met.

(b) *Mineral leases.* The borrower must request Agency consent to lease any mineral rights used as security for FLP loans.

(1) For loans secured by real estate before December 23, 1985, the Agency has a security interest in any mineral rights the borrower has on the real estate pledged as collateral.

(2) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in any mineral rights if the mineral rights were included in an appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

(i) The Agency's security interest; or

(ii) Compliance with any applicable environmental requirements of subpart G of 7 CFR part 1940.

(c) *Lease of chattel security.* Lease of chattel security is not authorized.

(d) *Lease proceeds.* Lease proceeds are considered normal income security and may be used in accordance with §765.303.

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

### §765.253 Ceasing to operate security.

If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Agency's best interests;

(b) The borrower is unable to graduate;

(c) The borrower is not ineligible as a result of disqualification for Federal crop insurance violation according to 7 CFR part 718;

(d) The borrower has leased the security according to §765.252(a)(2); and

(e) Any one of the following conditions is met:

(1) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(2) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(3) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

### §§765.254–765.300 [Reserved]

## Subpart G—Disposal of Chattel Security

### §765.301 General.

(a) The borrower must account for all security.

(b) The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

(1) The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

(2) The market value for basic security is determined by an appraisal obtained in accordance with §761.7 of this chapter.

(c) When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

(d) The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

(e) The transaction must not interfere with the borrower's farming operation or jeopardize the borrower's ability to repay the FLP loan.

(f) The disposition must enhance the program objectives of the FLP loan.

(g) When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the farming operation as well as meet the program objectives, purposes, and limitations for the type of loan.

(h) All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency. If all FLP loan installments and any past due installments, for the period of the agreement for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.

### § 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds for each production cycle, including proceeds from the sale of milk, crops on hand or in storage, planned proceeds from Government payments, crop insurance and insurance proceeds derived from the loss of security.

(b) The agreement for the use of proceeds will remain in effect until the proper disposition of all listed chattel security has been accomplished, or the remaining chattel security has been transferred to a new agreement for the use of proceeds.

(c) The borrower must report any disposition of basic or normal income security immediately to the Agency.

(d) If a borrower wants to dispose of chattel security not listed or in a way different than provided on the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition.

(e) If the borrower sells security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(f) The borrower must provide the Agency with the necessary information to update the farm operating plan and the agreement for the use of proceeds in accordance with § 761.102 of this chapter.

(g) Changes to the agreement on the use of proceeds will be recorded, dated and initialed by the borrower and the Agency.

(h) The borrower must maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency at the end of the period covered by the agreement for the use of proceeds.

### § 765.303 Use of proceeds from chattel security.

(a) *General.* (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.

(2) Proceeds remitted to the Agency may be used as follows:

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

(3) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means in time to prevent the borrower and the Agency from suffering a substantial loss.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;

(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to the borrower's livestock, if this is preferable to marketing, provided the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

(b) *Proceeds from the sale of normal income security.* In addition to the uses specified in paragraph (a) of this section, the agreement for the use of proceeds will allow for release of proceeds

from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.

(c) *Proceeds from the sale of basic security*. In addition to the uses specified in paragraph (a) of this section:

(1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

(2) Security may be exchanged for chattel property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

(3) Proceeds may be used to purchase chattel property better suited to the borrower's needs if the Agency will acquire a lien on the purchased property. The value of the purchased property, together with any proceeds applied to the FLP loan, must at least equal the value of the Agency lien on the old security.

### § 765.304 Unapproved disposition.

(a) If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:

(1) Make restitution to the Agency within 30 days of Agency notification; or

(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.

(b) Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section, or a second unauthorized disposition, whether or not cured, constitutes a non-monetary default, will be considered by the Agency when making eligibility determinations for future requests for assistance, may adversely impact such requests, and may result in civil or criminal action.

### § 765.305 Release of security interest.

(a) When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.

(b) Security interests on wool and mohair may be released when the security is marketed by consignment, provided all of the following conditions are met:

(1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;

(2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and

(3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.

### §§ 765.306–765.350 [Reserved]

## Subpart H—Partial Release of Real Estate Security

### § 765.351 Requirements to obtain Agency consent.

The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including, but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

(a) *General.* The following conditions apply to all transactions affecting real estate:

(1) The transaction will enhance the objectives for which the FLP loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the FLP loan, or is necessary to place the borrower's farming operation on a sound basis;

(3) The amount received for the security being disposed of or the rights being granted is not less than the market value;

(4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

(5) The transaction must not interfere with the borrower's farming operation;

(6) The market value of the remaining security is adequate to secure the FLP loans, or if the market value of the security before the transaction was inadequate to fully secure the FLP loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;

(8) The borrower cannot graduate to other credit;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718; and

(10) The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including, but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate that secures an FLP loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.

(2) Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.

(c) *Exchange of security property.* (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

(d) *Sale under contract for deed.* A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FLP loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352;

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

(e) *Transfer of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The sale of an allotment must comply with all conditions of this subpart.

(3) The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under §765.252.

**§765.352 Use of proceeds.**

(a) Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with §761.10 of this chapter.

(b) After acceleration, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

**§765.353 Determining market value.**

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than $25,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security.

(c) *Appraisal requirements.* Appraisals, when required, will be conducted in accordance with §761.7 of this chapter.

**§§765.354–765.400 [Reserved]**

## Subpart I—Transfer of Security and Assumption of Debt

**§765.401 Conditions for transfer of real estate and chattel security.**

(a) *General conditions.* (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing FLP debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

(b) *Agency consent.* A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

**§765.402 Transfer of security and loan assumption on same rates and terms.**

An eligible applicant may assume an FLP loan on the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

(b) A family member of the borrower or an entity comprised solely of family members of the borrower assumes the debt along with the original borrower;

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;

(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be a family member of the original borrower or an entity that is comprised solely of family members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when the Agency made the original loan or remain an entity comprised solely of people who were original members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, or cooperative, the transferee must:

(i) Have been a corporate stockholder or a cooperative member when the Agency made the original loan or will be an entity comprised solely of people who were corporate stockholders or cooperative members when the entity received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or members in the transferee.

## § 765.403 Transfer of security to and assumption of debt by eligible applicants.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of FLP debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in part 764 of this chapter for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 of this chapter.

(b) *Assumption of Non-program loans.* Applicants eligible for FO loans under part 764 of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.* EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter and the property proposed for transfer meets program requirements.

(d) *Amount of assumption.* The transferee must assume the lesser of:

(1) The outstanding balance of the transferor's loan; or

(2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.

(e) *Rates and terms.* The interest rate and loan term will be determined according to rates and terms established in part 764 of this chapter for the type of loan being assumed.

## § 765.404 Transfer of security to and assumption of debt by ineligible applicants.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to applicants who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

(b) *Eligibility.* Transferees must:

(1) Provide written documentation verifying their credit worthiness and debt repayment ability;

(2) Not have received debt forgiveness from the Agency;

(3) Not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718; and

(4) Not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(c) *Assumption amount.* The transferee must assume the total outstanding FLP debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding FLP debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's market value.

(d) *Downpayment.* Non-program transferees must make a downpayment to the Agency of not less than 10 percent of the lesser of the market value or unpaid debt.

(e) *Interest rate.* The interest rate will be the Non-program interest rate in effect at the time of loan approval.

(f) *Loan terms.* (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the applicant's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in 5 years or less, based on the applicant's repayment ability.

### § 765.405 Payment of costs associated with transfers.

The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

(a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;

(b) The transferee's payoff of any junior liens does not exceed $5,000;

(c) Fees are customary and reasonable;

(d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and

(e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.

### § 765.406 Release of transferor from liability.

(a) *General.* Agency approval of an assumption does not automatically release the transferor from liability.

(b) *Requirements for release.* (1) The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

(2) If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with subpart B of 7 CFR part 1956.

(4) Except for loans in default being serviced under 7 CFR part 766, if an individual who is jointly liable for repayment of an FLP loan withdraws from the farming operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:

(i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;

(ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and

(iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.

**§§ 765.407–765.450 [Reserved]**

## Subpart J—Deceased Borrowers

### § 765.451 Continuation of FLP debt and transfer of security.

(a) *Individuals who are liable.* Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security instruments.

(b) *Individuals who are not liable.* The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

### § 765.452 Borrowers with Non-program loans.

(a) *Loan continuation.* (1) The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

(2) The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.

(b) *Loan assumption.* A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part.

(c) *Loan discontinuation.* (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part.

**§§ 765.453–765.500 [Reserved]**

## Subpart K—Exception Authority

### § 765.501 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Agency's financial interest.

# PART 766—DIRECT LOAN SERVICING—SPECIAL

## Subpart A—Overview

Sec.
766.1 Introduction.
766.2 Abbreviations and definitions.
766.3–766.50 [Reserved]

## Subpart B—Disaster Set-Aside

766.51 General.
766.52 Eligibility.
766.53 Disaster Set-Aside amount limitations.
766.54 Borrower application requirements.
766.55 Eligibility determination.
766.56 Security requirements.
766.57 Borrower acceptance of Disaster Set-Aside.
766.58 Installment to be set aside.
766.59 Payments toward set-aside installments.
766.60 Canceling a Disaster Set-Aside.
766.61 Reversal of a Disaster Set-Aside.
766.62–766.100 [Reserved]

## Subpart C—Loan Servicing Programs

766.101 Initial Agency notification to borrower of loan servicing programs.
766.102 Borrower application requirements.
766.103 Borrower does not respond or does not submit a complete application.
766.104 Borrower eligibility requirements.
766.105 Agency consideration of servicing requests.
766.106 Agency notification of decision regarding a complete application.
766.107 Consolidation and rescheduling.
766.108 Reamortization.
766.109 Deferral.
766.110 Conservation Contract.
766.111 Writedown.
766.112 Additional security for restructured loans.
766.113 Buyout of loan at current market value.
766.114 State-certified mediation and voluntary meeting of creditors.
766.115 Challenging the Agency appraisal.
766.116–766.150 [Reserved]
APPENDIX A TO SUBPART C OF PART 766

APPENDIX B TO SUBPART C OF PART 766—FSA–2512, NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE
APPENDIX C TO SUBPART C OF PART 766—FSA–2514, NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS IN NON-MONETARY DEFAULT

Subpart D—Homestead Protection Program

766.151 Applying for Homestead Protection.
766.152 Eligibility.
766.153 Homestead Protection transferability.
766.154 Homestead Protection leases.
766.155 Conflict with State law.
766.156–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

766.201 Shared Appreciation Agreement.
766.202 Determining the shared appreciation due.
766.203 Payment of recapture.
766.204 Amortization of recapture.
766.205 Shared Appreciation Payment Agreement rates and terms.
766.206 Net Recovery Buyout Recapture Agreement.
766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

766.251 Repayment of unauthorized assistance.
766.252 Unauthorized assistance resulting from submission of false information.
766.253 Unauthorized assistance resulting from submission of inaccurate information by borrower or Agency error.
766.254–766.300 [Reserved]

Subpart G—Loan Servicing For Borrowers in Bankruptcy

766.301 Notifying borrower in bankruptcy of loan servicing.
766.302 Loan servicing application requirements for borrowers in bankruptcy.
766.303 Processing loan servicing requests from borrowers in bankruptcy.
766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

766.351 Liquidation.
766.352 Voluntary sale of real property and chattel.
766.353 Voluntary conveyance of real property.
766.354 Voluntary conveyance of chattel.
766.355 Acceleration of loans.
766.336 Acceleration of loans to American Indian borrowers.
766.357 Involuntary liquidation of real property and chattel.
766.358–766.400 [Reserved]

Subpart I—Exception Authority

766.401 Agency exception authority.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1981d and 1989.

SOURCE: 72 FR 63316, Nov. 8, 2007, unless otherwise noted.

## Subpart A—Overview

### § 766.1 Introduction.

(a) This part describes the Agency's servicing policies for direct loan borrowers who:

(1) Are financially distressed;

(2) Are delinquent in paying direct loans or otherwise in default;

(3) Have received unauthorized assistance;

(4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or

(5) Have loan security being liquidated voluntarily or involuntarily.

(b) The Agency services direct FLP loans under the policies contained in this part.

(1) Youth loans:

(i) May not receive Disaster Set-Aside under subpart B of this part;

(ii) Will only be considered for rescheduling according to § 766.107 and deferral according to § 766.109.

(2) The Agency does not service Non-program loans under this part except where noted.

(c) The Agency requires the borrower to make every reasonable attempt to make payments and comply with loan agreements before the Agency considers special servicing.

### § 766.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

### §§ 766.3–766.50 [Reserved]

## Subpart B—Disaster Set-Aside

### § 766.51 General.

(a) DSA is available to borrowers with program loans who suffered losses as a result of a natural disaster.

(b) DSA is not intended to circumvent other servicing available under this part.

(c) Non-program loans may be serviced under this subpart for borrowers who also have program loans.

### § 766.52 Eligibility.

(a) *Borrower eligibility*. The borrower must meet all of the following requirements to be eligible for a DSA:

(1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster. Farmers who have rented out their land base for cash are not operating the farm.

(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.

(3) The borrower cannot have more than one installment set aside on each loan.

(4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency. This determination will be based on:

(i) The borrower's actual production, income and expense records for the year the natural disaster occurred;

(ii) Any other records required by the Agency;

(iii) Compensation received for losses; and

(iv) Increased expenses incurred because of the natural disaster.

(5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the farm operating plan.

(6) The borrower must not be in nonmonetary default.

(7) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.

(b) *Loan eligibility*. (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.

(2) All of the borrower's program and non-program loans must be current after the Agency completes a DSA of the scheduled installment.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any special servicing action under this part to the loan since the natural disaster occurred.

(5) For any loan that will receive a DSA, the remaining term of the loan must equal or exceed 2 years from the due date of the installment set-aside.

(6) The loan must not have a DSA in place.

### § 766.53 Disaster Set-Aside amount limitations.

(a) The DSA amount is limited to the lesser of:

(1) The first or second scheduled annual installment on the FLP loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

### § 766.54 Borrower application requirements.

(a) *Requests for DSA*. (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.

(2) All borrowers must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production cycle in which the disaster occurred unless the Agency already has this information.

(2) The Agency may request other information needed to make an eligibility determination.

**§766.55 Eligibility determination.**

Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

**§766.56 Security requirements.**

If, prior to executing the appropriate DSA Agency documents, the borrower is not current on all FLP loans, the borrower must execute and provide to the Agency a best lien obtainable on all of their assets except those listed under §766.112(b).

**§766.57 Borrower acceptance of Disaster Set-Aside.**

The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

**§766.58 Installment to be set aside.**

(a) The Agency will set-aside the first installment due immediately after the disaster occurred.

(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set-aside the next annual installment.

**§766.59 Payments toward set-aside installments.**

(a) *Interest accrual.* (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.

(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.

(b) *Due date.* The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments.* The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.

**§766.60 Canceling a Disaster Set-Aside.**

The Agency will cancel a DSA if:

(a) The Agency takes any primary loan servicing action on the loan;

(b) The borrower pays the current market value buyout in accordance with §766.113; or

(c) The borrower pays the set-aside installment.

**§766.61 Reversal of a Disaster Set-Aside.**

If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.

**§§766.62–766.100 [Reserved]**

## Subpart C—Loan Servicing Programs

**§766.101 Initial Agency notification to borrower of loan servicing programs.**

(a) *Borrowers notified.* The Agency will provide servicing information under this section to borrowers who:

(1) Have a current farm operating plan that demonstrates the borrower is financially distressed;

(2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;

(3) Are in non-monetary default on any loan agreements;

(4) Have filed bankruptcy;

(5) Request this information;

(6) Request voluntary conveyance of security;

(7) Have only delinquent SA; or

(8) Are subject to any other collection action, except when such action is a result of failure to graduate. Borrowers who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.

(b) *Form of notification.* The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement

programs, and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA–2512 (Appendix A to this subpart);

(2) A borrower who is 90 days past due will be sent FSA–2510 (Appendix B to this subpart);

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA–2514 (Appendix C to this subpart);

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. The appropriate response time will begin three days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand-delivered.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA–2510;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA–2514.

### § 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification and signed by all borrowers;

(2) Completed Agency application form;

(3) Financial records for the 3 most recent years, including income tax returns;

(4) The farming operation's production records for the 3 most recent years or the years the borrower has been farming, whichever is less;

(5) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(6) Verification of all non-farm income;

(7) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements; and

(8) Verification of all debts and collateral.

(b) In addition to the requirements contained in paragraph (a) of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.

(c) To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under subpart B of 7 CFR part 1956.

(d) If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.

(e) The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.

(f) When jointly liable borrowers have been divorced and one has withdrawn from the farming operation, the

Agency may release the withdrawing individual from liability, provided:

(1) The remaining individual submits a complete application in accordance with this section;

(2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all FLP loan payments;

(3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and

(4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.

### § 766.103 Borrower does not respond or does not submit a complete application.

(a) If a borrower, who is financially distressed or current, requested loan servicing and received FSA–2512, but fails to respond timely and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2).

(b) If a borrower who is 90 days past due and received FSA–2510, or is in non-monetary, or both monetary and non-monetary default and received FSA–2514, and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:

(1) The Agency's intent to accelerate the loan; and

(2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780.

### § 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

(1) The delinquency or financial distress is the result of reduced repayment ability due to one of the following circumstances beyond the borrower's control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the farming operation; or

(v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.

(2) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.

(3) If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.

(4) The borrower has acted in good faith.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(6) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(b) Debtors with SA only must:

(1) Be delinquent due to circumstances beyond their control;

(2) Have acted in good faith.

### § 766.105 Agency consideration of servicing requests.

(a) *Order in which Agency considers servicing options.* The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:

(1) Conservation Contract, if requested;

(2) Consolidation and rescheduling or reamortization;

(3) Deferral;

(4) Writedown; and

(5) Current market value buyout.

(b) *Debt service margin.* (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) of this section.

(2) If the borrower cannot develop a feasible plan with the 110 percent debt

service margin, the Agency will reduce the debt service margin by one percent and reconsider all available servicing authorities. This process will be repeated until a feasible plan has been developed or it has been determined that a feasible plan is not possible with a 100 percent margin.

(3) The borrower must be able to develop a feasible plan with at least a 100 percent debt service margin to be considered for the servicing options listed in paragraphs (a)(1) through (4) of this section.

(c) *Appraisal of borrower's assets.* The Agency will obtain an appraisal on:

(1) All Agency security, non-essential assets, and real property unencumbered by the Agency that does not meet the criteria established in § 766.112(b), when:

(i) A writedown is required to develop a feasible plan;

(ii) The borrower will be offered current market value buyout.

(2) The borrower's non-essential assets when their net recovery value may be adequate to bring the delinquent loans current.

### § 766.106 Agency notification of decision regarding a complete application.

The Agency will send the borrower notification of the Agency's decision within 60 calendar days after receiving a complete application for loan servicing.

(a) *Notification to financially distressed or current borrowers.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, the Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower the calculations used and the reasons for the adverse decision.

(i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780 of this title.

(ii) The Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(b) *Notification to borrowers 90 days past due or in non-monetary default.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not timely accept the offer, or fails to respond, the Agency will notify the borrower of its intent to accelerate the account.

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower notification within 15 days, including the calculations used and reasons for the adverse decision, of its intent to accelerate the account in accordance with subpart H of this part, unless the account is resolved through any of the following options:

(i) The borrower may request reconsideration, mediation or voluntary meeting of creditors, or appeal in accordance with 7 CFR parts 11 and 780.

(ii) The borrower may request negotiation of appraisal within 30 days in accordance with § 766.115.

(iii) If the net recovery value of non-essential assets is sufficient to pay the account current, the borrower has 90 days to pay the account current.

(iv) The borrower, if eligible in accordance with § 766.113, may buy out the loans at the current market value within 90 days.

(v) The borrower may request homestead protection if the borrower's primary residence was pledged as security by providing the information required under § 766.151.

**§766.107 Consolidation and rescheduling.**

(a) *Loans eligible for consolidation.* The Agency may consolidate OL loans if:

(1) The borrower meets the loan servicing eligibility requirements in §766.104;

(2) The Agency determines that consolidation will assist the borrower to repay the loans;

(3) Consolidating the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable;

(6) The loans are not secured by real estate;

(7) The Agency holds the same lien position on each loan;

(8) The Agency has not serviced the loans for unauthorized assistance under subpart F of this part; and

(9) The loan is not currently deferred, as described in §766.109, or set-aside, as described in subpart B of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.

(b) *Loans eligible for rescheduling.* The Agency may reschedule loans made for chattel purposes, including OL, SW, RL, EE, or EM if:

(1) The borrower meets the loan servicing eligibility requirements in §766.104;

(2) Rescheduling the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that rescheduling will assist the borrower to repay the loans;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in §766.109, or set-aside, as described in subpart B of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.

(c) *Consolidated and rescheduled loan terms.* (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.

(2) The repayment period cannot exceed 15 years from the date of the consolidation and rescheduling, except that the repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.

(d) *Consolidated and rescheduled loan interest rate.* The interest rate of consolidated and rescheduled loans will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The interest rate for that type of loan on the date a complete servicing application was received;

(ii) The interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(3) At the time of consolidation and rescheduling, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans consolidated and rescheduled at the limited resource interest rate will be subject to annual limited

resource review in accordance with § 765.51 of this chapter.

(e) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of consolidation and rescheduling.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of consolidation and rescheduling.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the servicing actions.

(f) *Installments.* If there are no deferred installments, the first installment payment under the consolidation and rescheduling will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.

**§ 766.108 Reamortization.**

(a) *Loans eligible for reamortization.* The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, and EM if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) Reamortization will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that reamortization will assist the borrower to repay the loan;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.

(b) *Reamortized loan terms.* (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.

(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized in paragraphs (2)(i) through (iv), or the useful life of the security, whichever is less.

(i) FO, SW, RL, EE real estate-type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.

(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.

(iii) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(iv) SA loans may not exceed 25 years from the date of the original Shared Appreciation note.

(c) *Reamortized loan interest rate.* The interest rate will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The interest rate for that type of loan on the date a complete servicing application was received;

(ii) The interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(3) At the time of reamortization, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with §765.51 of this chapter.

(5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(d) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.

(e) *Installments.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.

### §766.109 Deferral.

(a) *Conditions for approving deferrals.* The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements in §766.104;

(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;

(3) The need for deferral is temporary; and

(4) The borrower develops feasible first-year deferral and post-deferral farm operating plans subject to the following:

(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.

(ii) The Agency will consider a partial deferral if deferral of the total Agency payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.

(b) *Deferral period.* (1) The deferral term will not exceed 5 years and will be determined based on the post-deferral plan that results in the:

(i) Greatest improvement over the first year cash available to service FLP debt;

(ii) The shortest possible deferral period.

(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.

(c) *Agency actions when borrower's repayment ability improves.* (1) If during the deferral period the borrower's repayment ability has increased to allow the borrower to make payments on the deferred loans, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in nonmonetary default.

(2) If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C of this chapter.

(d) *Associated loan servicing.* (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.

(2) Loans deferred will also be serviced in accordance with §§766.107, 766.108 and 766.111, as appropriate.

### §766.110 Conservation Contract.

(a) *General.* (1) A debtor with only SA or Non-program loans is not eligible for a Conservation Contract. However, an SA or Non-program loan may be considered for a Conservation Contract if the borrower also has program loans.

(2) A current or financially distressed borrower may request a Conservation Contract at any time prior to becoming 90 days past due.

(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements in §766.104 will apply.

(4) A Conservation Contract may be established for conservation, recreation, and wildlife purposes.

(5) The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.

(6) Only loans secured by the real estate that will be subject to the easement, may be considered for a Conservation Contract.

(b) *Eligible lands.* The following types of lands are eligible to be considered for a Conservation Contract by the Conservation Contract review team:

(1) Wetlands or highly erodible lands; and

(2) Uplands that meet any one of the following criteria:

(i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;

(ii) Land in 100-year floodplains;

(iii) Areas of high water quality or scenic value;

(iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;

(v) Aquifer recharge areas of local, regional, State, or tribal importance;

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas;

(vii) Areas that contain soils generally not suited for cultivation; or

(viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.

(c) *Unsuitable acreage.* Acreage is unsuitable for Conservation Contract if:

(1) It is not suited or eligible for the program due to legal restrictions;

(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or

(3) The Conservation Contract review team determines that the land is not suitable for conservation, wildlife, or recreational purposes.

(d) *Conservation Contract terms.* The borrower selects the term of the contract, which may be 10, 30, or 50 years.

(e) *Conservation management plan.* The Agency, through the recommendations of the Conservation Contract review team, is responsible for approving the conservation management plan.

(f) *Management authority.* The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's interest.

(g) *Limitations.* The Conservation Contract must meet the following conditions:

(1) Result in a feasible plan for current borrowers; or

(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and

(3) Improve the borrower's ability to repay the remaining balance of the loan.

(h) *Maximum debt reduction for a financially distressed or current borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{Total acres}} \text{ divided by } = \text{Percent of contract acres to total acres}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage calculated under paragraph (h)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\underline{\qquad\qquad}_{\text{Total FLP debt}} \times \underline{\qquad\qquad\qquad\qquad}_{\text{Percent calculated under (h)(1)}} = \underline{\qquad\qquad\qquad\qquad}_{\text{FLP debt secured by contract acres}}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by 33 percent.

$$\underline{\qquad\qquad}_{\text{Total FLP debt}} \times 33\% = \underline{\qquad\qquad}$$

(4) The lesser of the amounts calculated in paragraphs (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.

(5) The borrower will receive 60 percent of the amount calculated in paragraph (h)(4) of this section for a 30-year contract.

$$\underline{\qquad\qquad}_{\text{Result from (h)(4)}} \times 60\% = \underline{\qquad\qquad\qquad\qquad}_{\text{Maximum debt reduction for a 30-year contract}}$$

(6) The borrower will receive 20 percent of the amount calculated in paragraph (h)(4) of this section for a 10-year contract.

$$\underline{\qquad\qquad}_{\text{Result from (h)(4)}} \times 20\% = \underline{\qquad\qquad\qquad\qquad}_{\text{Maximum debt reduction for a 10-year contract}}$$

(i) *Maximum debt reduction for a delinquent borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\underline{\qquad\qquad}_{\text{Contract acres}} \text{ divided by } \underline{\qquad\qquad}_{\text{Total acres}} = \underline{\qquad\qquad\qquad\qquad}_{\text{Percent of contract acres to total acres}}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage calculated in paragraph (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\underline{\qquad\qquad} \times \underline{\qquad\qquad\qquad\qquad} = \underline{\qquad\qquad\qquad\qquad\qquad\qquad}$$

Total FLP debt × Percent calculated in (i)(1) = FLP debt secured by contract acres

(3) Multiply the market value of the total acres, less contributory value of any structural improvements, that secure the borrower's FLP loans by the percent calculated in paragraph (i)(1) of this section to determine the current value of the acres in the contract.

$$\underline{\qquad\qquad\qquad} \times \underline{\qquad\qquad\qquad\qquad} = \underline{\qquad\qquad\qquad}$$

Market value of total acres less contributory value of structural improvements × Percent calculated in (i)(1) = Market value of acres in the contract

(4) Subtract the market value of the contract acres calculated in paragraph (i)(3) of this section from the FLP debt secured by the contract acres as calculated in paragraph (i)(2) of this section.

$$\underline{\qquad\qquad\qquad} - \underline{\qquad\qquad\qquad} = \underline{\qquad\qquad}$$

Result from (i)(2) − Result from (i)(3) = Difference

(5) Select the greater of the amounts calculated in either paragraphs (i)(3) and (i)(4) of this section.

(6) The lesser of the amounts calculated in paragraphs (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 50-year contract term.

(7) The borrower will receive 60 percent of the amount calculated in paragraph (i)(6) of this section for a 30-year contract term.

$$\underline{\qquad\qquad\qquad} \times 60\% = \underline{\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad}$$

Result from (i)(6) × 60% = Maximum debt cancellation for a 30-year term

(8) The borrower will receive 20 percent of the amount calculated in paragraph (i)(6) of this section for a 10-year contract term.

$$\underline{\qquad\qquad\qquad} \times 20\% = \underline{\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad}$$

Result from (i)(6) × 20% = Maximum debt cancellation for a 10-year term

(j) *Conservation Contract Agreement.* The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions.

(k) *Transferring title to land under Conservation Contract.* If the borrower or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.

(l) *Borrower appeals of technical decisions.* Borrower appeals of the Natural

Resources Conservation Service's (NRCS) technical decisions made in connection with a Conservation Contract, will be handled in accordance with applicable NRCS regulations. Other aspects of the denial of a conservation contract may be appealed in accordance with 7 CFR parts 11 and 780.

### §766.111 Writedown.

(a) *Eligibility*. The Agency will only consider a writedown if the borrower:

(1) Meets the eligibility criteria in §766.104;

(2) Is delinquent;

(3) Has not previously received debt forgiveness on any FLP direct loan; and

(4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12.

(b) *Conditions.* (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets.

(3) The writedown amount, excluding debt reduction received through Conservation Contract, does not exceed $300,000.

(4) A borrower who owns real estate must execute an SAA in accordance with §766.201.

(c) *Associated loan servicing.* Loans written down will also be serviced in accordance with §§766.107 and 766.108, as appropriate.

### §766.112 Additional security for restructured loans.

(a) If the borrower is delinquent prior to restructuring, the borrower, and all entity members in the case of an entity, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b) of this section, when the Agency is servicing a loan.

(b) The Agency will take the best lien obtainable on all assets the borrower owns, except:

(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(2) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(3) When the Agency cannot obtain a valid lien;

(4) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

### §766.113 Buyout of loan at current market value.

(a) *Borrower eligibility*. A delinquent borrower may buy out the borrower's FLP loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;

(2) The borrower has acted in good faith;

(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;

(4) The borrower is unable to develop a feasible plan through primary loan servicing programs or a Conservation Contract, if requested;

(5) The present value of the restructured loans is less than the net recovery value of Agency security;

(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and

(7) The amount of debt forgiveness does not exceed $300,000.

(b) *Buyout time frame.* After the Agency offers current market value buyout of the loan, the borrower has 90 days from the date of Agency notification to pay that amount.

### § 766.114 State-certified mediation or voluntary meeting of creditors.

(a) A borrower who is unable to develop a feasible plan but is otherwise eligible for primary loan servicing may request:

(1) State-certified mediation; or

(2) Voluntary meeting of creditors when a State does not have a certified mediation program.

(b) Any negotiation of the Agency's appraisal must be completed before State-certified mediation or voluntary meeting of creditors.

### § 766.115 Challenging the Agency appraisal.

(a) A borrower considered for primary loan servicing who does not agree with the Agency's appraisal of the borrower's assets may:

(1) Obtain a technical appraisal review of the Agency's appraisal and provide it at the reconsideration or appeal hearing;

(2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:

(i) Pay for this appraisal;

(ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is five percent or less.

(3) Negotiate the Agency's appraisal by obtaining a second appraisal.

(i) If the difference between the two appraisals is five percent or less, the borrower will choose the appraisal to be used in Agency calculations.

(ii) If the difference between the two appraisals is greater than five percent, the borrower may request a third appraisal. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

(iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.

(iv) The borrower may not appeal a negotiated appraisal.

(b) If the appraised value of the borrower's assets changes as a result of the appealed appraisal or the negotiated appraisal, the Agency will reconsider its previous loan servicing decision using the new appraisal value.

(c) If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information utilized to make the appeal decision, unless stated otherwise in the appeal decision letter.

### §§ 766.116–766.150 [Reserved]

APPENDIX A TO SUBPART C OF PART 766

This form is available electronically.

| FSA-2512<br>(12-31-07) | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency | Position 4 |
|---|---|---|

**NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE**

This notice informs you of servicing options that may be available to current borrowers, financially distressed borrowers, or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f).

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

**Note:** Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

*The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information ( Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of the Agency's handbooks and forms;
(h) Reconsideration, mediation, negotiation and appeal rights;
(i) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You are financially distressed or delinquent due to one of the following circumstances beyond your control:
(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are delinquent, are offered loan servicing, and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

You must pay a portion of the interest that has accrued on your loans prior to closing the servicing action.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest
rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you are delinquent on your FLP loan and you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value.

Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) **Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) **Current Market Value Buyout**

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:
(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment
To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) **Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the FLP debt you owe the Agency may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. The Agency will not finance these alternatives.

Settlement alternatives

Settlement alternatives include:
(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) **Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

[72 FR 74153, Dec. 31, 2007]

## APPENDIX B TO SUBPART C OF PART 766—NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE

This form is available electronically.

| FSA-2510<br>(12-31-07) | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency | Position 4 |
|---|---|---|

**NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE**

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

*The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information ( Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, negotiation, and appeal rights;
(i) Acceleration and foreclosure;
(j) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(b) **Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

(c) **Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(d) **Current Market Value Buyout**

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.

(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

**Note:** The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2510," signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) **Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

[72 FR 63316, Nov. 8, 2007; 72 FR 74153, Dec. 31, 2007]

## APPENDIX C TO SUBPART C OF PART 766—NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE IN NON-MONETARY DEFAULT

This form is available electronically.

| FSA-2514<br>(12-31-07) | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency | Position 4 |
|---|---|---|

**NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE IN NON-MONETARY DEFAULT**

The Agency has reviewed your Farm Loan Programs (FLP) loan account. Our records show:

☐ You have disposed of property used to secure your FLP loan. You did not get written approval for this.

This property is (Describe property):
[Describe property]

☐ You have stopped farming.
☐ A foreclosure action has been filed against you by

☐ You have: _____

☐ You are also $ _____ behind on your payments.

You are in default on your FLP loans and must resolve this default. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you in resolving the default.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

*The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or b ecause all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information ( Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

**Note:** Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?
After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not resolve the default or apply within 60 days?

The Agency will accelerate your loans if you do not resolve the default, or apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, negotiation, and appeal rights;
(i) Acceleration and foreclosure;
(j) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You must resolve all non-monetary defaults prior to closing the servicing action.

(2) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

(3) If you are also financially distressed or delinquent, it must be due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the farming operation; or

(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(4) You do not have non-essential assets for which the net recovery value is sufficient to pay any delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:
(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

**(b) Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

**(c) Current Market Value Buyout**

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current if you are delinquent.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

**(d) Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to 5 years but no less than 3 years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

**Note:** The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2515, "Borrower Response to Notice of the Availability of Loan Servicing - For Borrowers who Received FSA-2514," signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD-1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

**(g) How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

**(h) Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR part 766.

## Subpart D—Homestead Protection Program

### § 766.151 Applying for Homestead Protection.

(a) *Pre-acquisition*—(1) *Notification*. If the borrower requested primary loan servicing but cannot develop a feasible plan, the Agency will notify the borrower of any additional information needed to process the homestead protection request. The borrower must provide this information within 30 days of Agency notification.

(2) *Borrower does not respond*. If the borrower does not timely provide the information requested, the Agency will deny the homestead protection request and provide appeal rights.

(3) *Application requirements*. A complete application for homestead protection will include:

(i) Updates to items required under § 766.102;

(ii) Information required under § 766.353; and

(iii) Identification of land and buildings to be considered.

(b) *Post-acquisition*—(1) *Notification*. After the Agency acquires title to the real estate property, the Agency will notify the borrower of the availability of homestead protection. The borrower must submit a complete application within 30 days of Agency notification.

(2) *Borrower does not respond*. If the borrower does not respond to the Agency notice, the Agency will dispose of the property in accordance with 7 CFR part 767.

(3) *Application requirements*. A complete application for homestead protection will include:

(i) Updates to items required under § 766.102; and

(ii) Identification of land and buildings to be considered.

### § 766.152 Eligibility.

(a) *Property*. (1) The principal residence and the adjoining land of up to 10 acres, must have served as real estate security for the FLP loan and may include existing farm service buildings. Homestead protection does not apply if the FLP loans were secured only by chattels.

(2) The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.

(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.

(4) Where voluntary conveyance of the property to the Agency is required to process the homestead protection request, the Agency will process any request for voluntary conveyance according to § 766.353.

(b) *Applicant*. To be eligible for homestead protection, the applicant:

(1) Must be the owner, or former owner from whom the Agency acquired title of the property pledged as security for an FLP loan. For homestead protection purposes, an owner or former owner includes:

(i) A member of an entity who is or was personally liable for the FLP loan secured by the homestead protection

property when the applicant or entity held fee title to the property; or

(ii) A member of an entity who is or was personally liable for the FLP loan that possessed and occupied a separate dwelling on the security property;

(2) Must have earned gross farm income commensurate with:

(i) The size and location of the farm; and

(ii) The local agricultural conditions in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the applicant applied for homestead protection;

(3) Must have received 60 percent of gross income from farming in at least two of the 6 years immediately preceding the year in which the applicant applied for homestead protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the applicant applied for homestead protection. The applicant may have left the home for not more than 12 months if it was due to circumstances beyond their control;

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease, and maintain the property in good condition. The lessee will be responsible for any normal maintenance; and

(6) Must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

### §766.153 Homestead Protection transferability.

Homestead protection rights are not transferable or assignable, unless the eligible party dies or becomes legally incompetent, in which case the homestead protection rights may be transferred to the spouse only, upon the spouse's agreement to comply with the terms and conditions of the lease.

### §766.154 Homestead Protection leases.

(a) *General.* (1) The Agency may approve a lease-purchase agreement on the appropriate Agency form subject to obtaining title to the property.

(2) If a third party obtains title to the property:

(i) The applicant and the property are no longer eligible for homestead protection;

(ii) The Agency will not implement any outstanding lease-purchase agreement.

(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.

(b) *Lease terms and conditions.* (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c) of this section.

(3) The lease term will not be less than 3 years and will not exceed 5 years.

(4) The lessee must agree to make lease payments on time and maintain the property.

(5) The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) The purchase price is the market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(3) The lessee may purchase homestead protection property with cash or other credit source.

(4) The lessee may receive Agency Non-program financing provided:

(i) The lessee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property; and

(iii) The lessee demonstrates an ability to repay such an FLP loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of homestead protection property.* The Agency will use an appraisal obtained within six months

from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the Agency.

### § 766.155 Conflict with State law.

If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.

### §§ 766.156–766.200 [Reserved]

## Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

### § 766.201 Shared Appreciation Agreement.

(a) *When a SAA is required.* The Agency requires a borrower to enter into a SAA with the Agency covering all real estate security when the borrower:

(1) Owns any real estate that serves or will serve as loan security; and

(2) Accepts a writedown in accordance with § 766.111.

(b) *When SAA is due.* The borrower must repay the calculated amount of shared appreciation after a term of 5 years from the date of the writedown, or earlier if:

(1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;

(2) The borrower repays or satisfies all FLP loans;

(3) The borrower ceases farming; or

(4) The Agency accelerates the borrower's loans.

### § 766.202 Determining the shared appreciation due.

(a) The value of the real estate security at the time of maturity of the SAA (market value) will be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The market value of the real estate security property will be determined based on a current appraisal completed within the previous 12 months in accordance with § 761.7 of this chapter, and subject to the following:

(1) Prior to completion of the appraisal, the borrower will identify any capital improvements that have been added to the real estate security since the execution of the SAA.

(2) The appraisal must specifically identify the contributory value of capital improvements made to the real estate security during the term of the SAA to make deductions for that value.

(3) For calculation of shared appreciation recapture, the contributory value of capital improvements added during the term of the SAA will be deducted from the market value of the property. Such capital improvements must also meet at least one of the following criteria:

(i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the market value.

(ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:

(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower must provide copies of appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.

(B) If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the SAA was originally executed, only the value added by the new item will be deducted from the market value.

(b) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the SAA was

signed if such value cannot be obtained through another method.

### §766.203 Payment of recapture.

(a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:

(1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within 4 years or less from the date of the writedown; or

(2) Fifty percent of such appreciation if the agreement is triggered more than 4 years from the date of the writedown or when the agreement matures.

(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation on the remaining portion will be due in accordance with paragraph (a) of this section.

(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.

### §766.204 Amortization of recapture.

(a) The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:

(1) Has not ceased farming and the borrower's account has not been accelerated;

(2) Provides a complete application in accordance with §764.51(b), by the recapture due date or within 60 days of Agency notification of the amount of recapture due, whichever is later;

(3) Is unable to pay the recapture and cannot obtain funds from any other source;

(4) Develops a feasible plan that includes repayment of the shared appreciation amount;

(5) Provides a lien on all assets, except those listed in §766.112(b); and

(6) Signs loan agreements and security instruments as required.

(b) If the borrower later becomes delinquent or financially distressed, reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C of this part.

### §766.205 Shared Appreciation Payment Agreement rates and terms.

(a) The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

(b) The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.

### §766.206 Net Recovery Buyout Recapture Agreement.

(a) *Servicing existing Net Recovery Buyout Recapture Agreements.* Prior to July 3, 1996, the Agency was authorized to offer borrowers buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.

(b) *Requirements and terms.* (1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.

(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:

(i) The market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;

(ii) The market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:

(A) The unpaid balance of prior liens at the time of the sale or conveyance; and

(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;

(iii) The total amount of the FLP debt the Agency wrote off for loans secured by real estate.

(3) If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with subpart H of this part.

(4) If the former borrower does not sell or convey the real estate within the 10-year term, no recapture is due.

**§§ 766.207–766.250 [Reserved]**

## Subpart F—Unauthorized Assistance

**§ 766.251 Repayment of unauthorized assistance.**

(a) Except where otherwise specified, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice. The Agency may reverse any unauthorized loan servicing actions, when possible.

(b) The borrower has the opportunity to meet with the Agency to discuss or refute the Agency's findings.

**§ 766.252 Unauthorized assistance resulting from submission of false information.**

A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower's behalf, submits information to the Agency that the borrower knows to be false.

**§ 766.253 Unauthorized assistance resulting from submission of inaccurate information by borrower or Agency error.**

(a) *Borrower options.* (1) The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

(2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:

(i) The borrower did not provide false information;

(ii) It is in the interest of the Agency;

(iii) The debt will be subject to the interest rate for Non-program loans;

(iv) The debt will be serviced as a Non-program loan;

(v) The term of the Non-program loan will be as short as feasible, but in no case will exceed:

(A) The remaining term of the FLP loan;

(B) Twenty-five (25) years for real estate loans; or

(C) The life of the security for chattel loans.

(b) *Borrower refusal to pay.* If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C of this part.

**§§ 766.254–766.300 [Reserved]**

## Subpart G—Loan Servicing For Borrowers in Bankruptcy

**§ 766.301 Notifying borrower in bankruptcy of loan servicing.**

If a borrower files for bankruptcy, the Agency will provide written notification to the borrower's attorney with a copy to the borrower as follows:

(a) *Borrower not previously notified.* The Agency will provide notice of all loan servicing options available under subpart C of this part, if the borrower has not been previously notified of these options.

(b) *Borrower with prior notification.* If the borrower received notice of all loan servicing options available under subpart C of this part prior to the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available.

**§ 766.302 Loan servicing application requirements for borrowers in bankruptcy.**

(a) *Borrower not previously notified.* To be considered for loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.

(b) *Borrower previously notified.* To be considered for continued loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of:

(1) Sixty days after the borrower's attorney received the notification of any remaining loan servicing options; or

(2) The remaining time from the Agency's previous notification of all servicing options that the Agency suspended when the borrower filed bankruptcy.

(c) *Court approval.* The borrower is responsible for obtaining court approval prior to exercising any available servicing rights.

### §766.303 Processing loan servicing requests from borrowers in bankruptcy.

(a) *Considering borrower requests for servicing.* Any request for servicing is the borrower's acknowledgment that the Agency will not interfere with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(b) *Borrowers with confirmed bankruptcy plans.* If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and subpart C of this part, as appropriate.

(c) *Chapter 7 borrowers.* A borrower filing for bankruptcy under chapter 7 of the Bankruptcy Code may not receive primary loan servicing unless the borrower reaffirms the entire FLP debt. A borrower who filed chapter 7 does not have to reaffirm the debt in order to be considered for homestead protection.

### §§766.304–766.350 [Reserved]

## Subpart H—Loan Liquidation

### §766.351 Liquidation.

(a) *General.* (1) When a borrower cannot or will not meet a loan obligation, the Agency will consider liquidating the borrower's account in accordance with this subpart.

(2) The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with §765.203 of this chapter.

(3) When no surviving family member or third party assumes or repays a deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's FLP loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.

(b) *Liquidation for Program borrowers.* (1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with §§766.355 and 766.356, as appropriate.

(2) Borrowers may voluntarily liquidate their security in accordance with §§766.352, 766.353 and 766.354. In such case, the Agency will:

(i) Not delay involuntary liquidation action.

(ii) Notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation, if the conditions of paragraph (b)(1) of this section have not been met.

(c) *Liquidation for non-program borrowers.* If a borrower has both program and Non-program loans, the borrower's account will be handled in accordance with paragraph (b) of this section. If a borrower with only Non-program loans is in default, the borrower may liquidate voluntarily, subject to the following:

(1) The Agency may delay involuntary liquidation actions when in the Agency's financial interest for a period not to exceed 60 days.

(2) The borrower must obtain the Agency's consent prior to the sale of the property.

(3) If the borrower will not pay the Agency in full, the minimum sales price must be the market value of the property as determined by the Agency.

(4) The Agency will accept a conveyance offer only when it is in the Agency's financial interest.

(5) If a Non-program borrower does not cure the default, or cannot or will not voluntarily liquidate, the Agency will accelerate the loan.

**§ 766.352 Voluntary sale of real property and chattel.**

(a) *General.* A borrower may voluntarily sell real property or chattel security to repay FLP debt in lieu of involuntary liquidation if all applicable requirements of this section are met. Partial dispositions are handled in accordance with part 765, subparts G and H, of this chapter.

(1) The borrower must sell all real property and chattel that secure FLP debt until the debt is paid in full or until all security has been liquidated.

(2) The Agency must approve the sale and approve the use of proceeds.

(3) The sale proceeds are applied in order of lien priority, except that proceeds may be used to pay customary costs appropriate to the transaction provided:

(i) The costs are reasonable in amount;

(ii) The borrower is unable to pay the costs from personal funds or have the purchaser pay;

(iii) The costs must be paid to complete the sale;

(iv) Costs are not for postage and insurance of the note while in transit when required for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real property from the mortgage.

(4) The Agency will approve the sale of property when the proceeds do not cover the borrower's full debt only if:

(i) The sales price must be equal to or greater than the market value of the property; and

(ii) The sale is in the Agency's financial interest.

(5) If an unpaid loan balance remains after the sale, the Agency will continue to service the loan in accordance with subpart B of 7 CFR part 1956.

(b) *Voluntary sale of chattel.* If the borrower complies with paragraph (a) of this section, the borrower may sell chattel security by:

(1) Public sale if the borrower obtains the agreement of lienholders as necessary to complete the public sale; or

(2) Private sale if the borrower:

(i) Sells all of the security for not less than the market value;

(ii) Obtains the agreement of lienholders as necessary to complete the sale;

(iii) Has a buyer who is ready and able to purchase the property; and

(iv) Obtains the Agency's agreement for the sale.

**§ 766.353 Voluntary conveyance of real property.**

(a) *Requirements for conveying real property.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A warranty deed or other deed acceptable to the Agency;

(5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity;

(6) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

(7) Title insurance or title record for the security, if available;

(8) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the FLP debt; and

(9) Any other documentation required by the Agency to evaluate the request.

(b) *Conditions for conveying real property.* The Agency will accept voluntary conveyance of real property by a borrower if:

(1) Conveyance is in the Agency's financial interest;

(2) The borrower conveys all real property securing the FLP loan; and

(3) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Prior and junior liens.* (1) The Agency will pay prior liens to the extent consistent with the Agency's financial interest.

(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments. If the borrower is unable to pay or obtain a release of the liens, the Agency may attempt to negotiate a settlement with the

lienholder if it is in the Agency's financial interest.

(d) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with a conveyance.

(2) The Agency will credit the borrower's account for the amount of the market value of the property less any prior liens, or the debt, whichever is less. In the case of an American Indian borrower whose loans are secured by real estate located within the boundaries of a Federally recognized Indian reservation, however, the Agency will credit the borrower's account with the greater of the market value of the security or the borrower's FLP debt.

(e) *Right of possession.* After voluntary conveyance, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights under an approved lease-purchase agreement executed according to §766.154 or required by State law.

### §766.354 Voluntary conveyance of chattel.

(a) *Requirements for conveying chattel.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;

(5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity borrower;

(6) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt.

(b) *Conditions for conveying chattel.* The Agency will accept conveyance of chattel only if:

(1) The borrower has made every possible effort to sell the property voluntarily;

(2) The borrower can convey the chattel free of other liens;

(3) The conveyance is in the Agency's financial interest;

(4) The borrower conveys all chattel securing the FLP loan; and

(5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the conveyance.

(2) The Agency will credit the borrower's account in the amount of the market value of the chattel.

### §766.355 Acceleration of loans.

(a) *General.* (1) The Agency accelerates loans in accordance with this section, unless:

(i) State law imposes separate restrictions on accelerations;

(ii) The borrower is American Indian, whose real estate is located on an Indian reservation.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with §766.101(a)(8).

(b) *Time limitations.* The borrower has 30 days from the date of the Agency acceleration notice to pay the Agency in full.

(c) *Borrower options.* The borrower may:

(1) Pay cash;

(2) Transfer the security to a third party in accordance with part 765, subpart I of this chapter;

(3) Sell the security property in accordance with §766.352; or

(4) Voluntarily convey the security to the Agency in accordance with §§766.353 and 766.354, as appropriate.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with § 766.357 if the borrower does not pay the account in full within the time period specified in the acceleration notice.

**§ 766.356 Acceleration of loans to American Indian borrowers.**

(a) *General.* (1) The Agency accelerates loans to American Indian borrowers whose real estate is located on an Indian reservation in accordance with this section, unless State law imposes separate restrictions on accelerations.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(8).

(4) At the time of acceleration, the Agency will notify the borrower and the Tribe that has jurisdiction over the Indian reservation of:

(i) The possible outcomes of a foreclosure sale and the potential impacts of those outcomes on rights established under paragraphs (a)(4)(ii) and (iii) of this section;

(ii) The priority for purchase of the property acquired by the Agency through voluntary conveyance or foreclosure;

(iii) Transfer of acquired property to the Secretary of the Interior if the priority of purchase of the property established under paragraph (a)(4)(ii) of this section is not exercised.

(b) *Borrower options.* The Agency will notify an American Indian borrower of the right to:

(1) Request the Tribe, having jurisdiction over the Indian reservation in which the real property is located, be assigned the loan;

(i) The Tribe will have 30 calendar days after the Agency notification of such request to accept the assignment of the loan.

(ii) The Tribe must pay the Agency the lesser of the outstanding Agency indebtedness secured by the real estate or the market value of the property.

(iii) The Tribe may pay the amount in a lump sum or according to the rates, terms and requirements established in part 770 of this chapter, subject to the following:

(A) The Tribe must execute the promissory note and loan documents within 90 calendar days of receipt from the Agency;

(B) Such loan may not be considered for debt writedown under 7 CFR part 770.

(iv) The Tribe's failure to respond to the request for assignment of the loan or to finalize the assignment transaction within the time provided, shall be treated as the Tribe's denial of the request.

(2) Request the loan be assigned to the Secretary of the Interior. The Secretary of the Interior's failure to respond to the request for assignment of the loan or to finalize the assignment transaction, shall be treated as denial of the request;

(3) Voluntarily convey the real estate property to the Agency;

(i) The Agency will conduct a environmental review before acceptingvoluntary conveyance.

(ii) The Agency will credit the account with the greater of the market value of the real estate or the amount of the debt.

(4) Sell the real estate;

(i) The buyer must have the financial ability to buy the property.

(ii) The sale of the property must be completed within 90 calendar days of the Agency's notification.

(iii) The loan can be transferred and assumed by an eligible buyer.

(5) Pay the FLP debt in full.

(6) Consult with the Tribe that has jurisdiction over the Indian reservation to determine if State or Tribal law provides rights and protections that are more beneficial than those provided under this section.

(c) *Tribe notification.* At the time of acceleration, the Agency will notify the Tribe that has jurisdiction over the Indian reservation in which the property is located, of the:

(1) Sale of the American Indian borrower's property;

(2) Market value of the property;

(3) Amount the Tribe would be required to pay the Agency for assignment of the loan.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with §766.357 if:

(1) The borrower does not pay the account in full within the time period specified in the acceleration notice;

(2) The borrower does not voluntarily convey the property to the Agency;

(3) Neither the Tribe nor the Secretary of the Interior accepts assignment of the borrower's loan.

### §766.357 Involuntary liquidation of real property and chattel.

(a) *General.* The Agency will liquidate the borrower's security if:

(1) The borrower does not satisfy the account in accordance with §§766.355 and 766.356, as appropriate;

(2) The involuntary liquidation is in the Agency's financial interest.

(b) *Foreclosure on loans secured by real property.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the foreclosure and sale of the property.

(2) If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the Agency's bid except when incremental bidding was used, in which case the amount of credit will be the maximum bid that was authorized. If the Agency does not acquire the foreclosed property, the Agency will credit the borrower's account in accordance with State law and guidance from the Regional OGC.

(3) Notwithstanding paragraph (b)(2), for an American Indian borrower whose real property secures an FLP loan and is located within the confines of a Federally-recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:

(i) The market value of the security; or

(ii) The amount of the FLP debt against the property.

(4) After the date of foreclosure, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights granted by State law.

(5) If an unpaid balance on the FLP loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

(c) *Foreclosure of loans secured by chattel.* (1) The Agency will charge the borrower's account for all recoverable costs incurred by the Agency as a result of the repossession and sale of the property.

(2) The Agency will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs.

(3) If an unpaid balance on the FLP loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

### §§766.358—766.400 [Reserved]

## Subpart I—Exception Authority

### §766.401 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon its financial interest.

# PART 767—INVENTORY PROPERTY MANAGEMENT

## Subpart A—Overview

Sec.

767.1 Introduction.
767.2 Abbreviations and definitions.
767.3–767.50 [Reserved]

### Subpart B—Property Abandonment and Personal Property Removal

767.51 Property abandonment.
767.52 Disposition of personal property from real estate inventory property.
767.53–767.100 [Reserved]

### Subpart C—Lease of Real Estate Inventory Property

767.101 Leasing real estate inventory property.
767.102 Leasing non-real estate inventory property.
767.103 Managing leased real estate inventory property.
767.104–767.150 [Reserved]

### Subpart D—Disposal of Inventory Property

767.151 General requirements.
767.152 Exceptions.
767.153 Sale of real estate inventory property.
767.154 Conveying easements, rights-of-way, and other interests in inventory property.
767.155 Selling chattel property.
767.156–767.200 [Reserved]

### Subpart E—Real Estate Property with Important Resources or Located in Special Hazard Areas

767.201 Real estate inventory property with important resources.
767.202 Real estate inventory property located in special hazard areas.
767.203–767.250 [Reserved]

### Subpart F—Exception Authority

767.251 Agency exception authority.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63358, Nov. 8, 2007, unless otherwise noted.

## Subpart A—Overview

### § 767.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for:

(1) Managing inventory property;

(2) Selling inventory property;

(3) Leasing inventory property;

(4) Managing real and chattel property the Agency takes into custody after abandonment by the borrower;

(5) Selling or leasing inventory property with important resources, or located in special hazard areas; and

(6) Conveying interest in real property for conservation purposes.

(b) *Basic policy.* The Agency maintains, manages and sells inventory property as necessary to protect the Agency's financial interest.

### § 767.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

### §§ 767.3–767.50 [Reserved]

## Subpart B—Property Abandonment and Personal Property Removal

### § 767.51 Property abandonment.

The Agency will take actions necessary to secure, maintain, preserve, manage, and operate the abandoned security property, including marketing perishable security property on behalf of the borrower when such action is in the Agency's financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR part 766.

### § 767.52 Disposition of personal property from real estate inventory property.

(a) *Preparing to dispose of personal property.* If, at the time of acquisition, personal property has been left on the real estate inventory property, the Agency will notify the former real estate owner and any known lienholders that the Agency will dispose of the personal property. Property of value may be sold at a public sale.

(b) *Reclaiming personal property.* The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.

(c) *Use of proceeds from sale of personal property.* Proceeds from the public sale of personal property will be distributed as follows:

(1) To lienholders in order of lien priority less a pro rata share of the sale expenses;

(2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;

(3) To the outstanding balance on the FLP loan; and

(4) To the borrower, if the borrower's whereabouts are known.

**§§767.53–767.100 [Reserved]**

## Subpart C—Lease of Real Estate Inventory Property

**§767.101 Leasing real estate inventory property.**

(a) The Agency may lease real estate inventory property:

(1) To the former owner under the Homestead Protection Program;

(2) To a beginning farmer selected to purchase the property but who was unable to purchase it because of a lack of Agency direct or guaranteed loan funds;

(3) When the Agency is unable to sell the property because of lengthy litigation or appeal processes.

(b) The Agency will lease real estate inventory property in an ''as is'' condition.

(c) The Agency will lease property for:

(1) Homestead protection in accordance with part 766, subpart D, of this chapter.

(2) A maximum of 18 months to a beginning farmer the Agency selected as purchaser when no Agency loan funds are available; or

(3) The shortest possible duration for all other cases subject to the following:

(i) The maximum lease term for such a lease is 12 months.

(ii) The lease is not subject to renewal or extension.

(d) The lessee may pay:

(1) A lump sum;

(2) On an annual installment basis; or

(3) On a crop-share basis, if the lessee is a beginning farmer under paragraph (a) of this section.

(e) The Agency leases real estate inventory property for a market rent amount charged for similar properties in the area.

(f) The Agency may require the lessee to provide a security deposit.

(g) Only leases to a beginning farmer or Homestead Protection Program participant will contain an option to purchase the property.

**§767.102 Leasing non-real estate inventory property.**

The Agency does not lease non-real estate property unless it is attached as a fixture to real estate inventory property that is being leased and it is essential to the farming operation.

**§767.103 Managing leased real estate inventory property.**

(a) The Agency will pay for repairs to leased real estate inventory property only when necessary to protect the Agency's interest.

(b) If the lessee purchases the real estate inventory property, the Agency will not credit lease payments to the purchase price of the property.

**§§767.104–767.150 [Reserved]**

## Subpart D—Disposal of Inventory Property

**§767.151 General requirements.**

Subject to §767.152, the Agency will attempt to sell its inventory property as follows:

(a) The Agency will combine or divide inventory property, as appropriate, to maximize the opportunity for beginning farmers to purchase real property.

(b) The Agency will advertise all real estate inventory property that can be used for any authorized FO loan purpose for sale to beginning farmers no later than 15 days after the Agency obtains title to the property.

(c) If more than one eligible beginning farmer applies, the Agency will select a purchaser by a random selection process open to the public.

(1) All applicants will be advised of the time and place of the selection.

(2) All drawn offers will be numbered.

(3) Offers drawn after the first will be held in suspense pending sale to the successful applicant.

(4) Random selection is final and not subject to administrative appeal.

(d) If there are no offers from beginning farmers, the Agency will sell inventory property by auction or sealed bid to the general public no later than 165 days after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.

(e) If the Agency receives no acceptable bid through an auction or sealed bid, the Agency will attempt to sell the property through a negotiated sale at the best obtainable price.

(f) If the Agency is not able to sell the property through negotiated sale, the Agency may list the property with a real estate broker. The broker must be properly licensed in the State in which the property is located.

**§ 767.152 Exceptions.**

The Agency's disposition procedure under § 767.151 is subject to the following:

(a) If the Agency leases real estate inventory property to a beginning farmer in accordance with § 767.101(a)(2), and the lease expires, the Agency will not advertise the property if the Agency has direct or guaranteed loan funds available to finance the transaction.

(b) The Agency will not advertise a property for sale until the homestead protection rights have terminated in accordance with part 766, subpart D of this chapter.

(c) The Agency may allow an additional 60 days if needed for conservation easements or environmental reviews.

(d) If the property was owned by an American Indian borrower and is located on an Indian reservation, the Agency will:

(1) No later than 90 days after acquiring the property, offer the opportunity to purchase or lease the property in accordance with:

(i) The priorities established by the Indian Tribe having jurisdiction over the Indian reservation;

(ii) In cases where priorities have not been established, the following order:

(A) A member of the Indian Tribe that has jurisdiction over the Indian reservation;

(B) An Indian entity;

(C) The Indian Tribe.

(2) Transfer the property to the Secretary of the Interior if the property is not purchased or leased under paragraph (1) of this section.

(e) If Agency analysis of farm real estate market conditions indicates the sale of the Agency's inventory property will have a negative effect on the value of farms in the area, the Agency may withhold inventory farm properties in the affected area from the market until further analysis indicates otherwise.

**§ 767.153 Sale of real estate inventory property.**

(a) *Pricing.* (1) The Agency will advertise property for sale at its market value, as established by an appraisal obtained in accordance with § 761.7.

(2) Property sold by auction or sealed bid will be sold for the best obtainable price. The Agency reserves the right to reject any and all bids.

(b) *Agency-financed sales.* The Agency may finance sales to purchasers if:

(1) The Agency has direct or guaranteed FO loan funds available;

(2) All applicable loan making requirements are met; and

(3) All non-beginning farmer purchasers make a 10 percent down payment.

(c) *Taxes and assessments.* (1) Property taxes and assessments will be prorated between the Agency and the purchaser based on the date the Agency conveys title to the purchaser.

(2) The purchaser is responsible for paying all taxes and assessments after the Agency conveys title to the purchaser.

(d) *Loss or damage to property.* If, through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or act of God before the Agency conveys the property, the Agency may reappraise the property and set the sale price accordingly.

(e) *Termination of contract.* Either party may terminate the sales contract. If the contract is terminated by the Agency, the Agency returns any deposit to the bidder. If the contract is terminated by the purchaser, any deposit will be retained by the Agency as full liquidated damages, except where failure to close is due to Agency nonapproval of credit.

(f) *Warranty on title.* The Agency will not provide any warranty on the title or on the condition of the property.

### § 767.154 Conveying easements, rights-of-way, and other interests in inventory property.

(a) *Appraisal of real property and real property interests.* The Agency will determine the value of real property and real property interests being transferred in accordance with § 761.7 of this chapter.

(b) *Easements and rights-of-way on inventory property.* (1) The Agency may grant or sell an easement or right-of-way for roads, utilities, and other appurtenances if the conveyance is in the public interest and does not adversely affect the value of the real property.

(2) The Agency may sell an easement or right-of-way by negotiation for market value to any purchaser for cash without giving public notice if:

(i) The sale would not prevent the Agency from selling the property; and

(ii) The sale would not decrease the value of the property by an amount greater than the price received.

(3) In the case of condemnation proceedings by a State or political subdivision, the transfer of title will not be completed until adequate compensation and damages have been determined and paid.

(c) *Disposal of other interests in inventory property.* (1) If applicable, the Agency will sell mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests with the surface land except as provided in paragraph (b) of this section.

(2) If the Agency sells the land in separate parcels, any rights or interests that apply to each parcel are included with the sale.

(3) The Agency will assign lease or royalty interests not passing by deed to the purchaser at the time of sale.

(4) Appraisals of property will reflect the value of such rights, interests, or leases.

### § 767.155 Selling chattel property.

(a) *Method of sale.* (1) The Agency will use sealed bid or established public auctions for selling chattel. The Agency does not require public notice of sale in addition to the notice commonly used by the auction facility.

(2) The Agency may sell chattel inventory property, including fixtures, concurrently with real estate inventory property if, by doing so, the Agency can obtain a higher aggregate price. The Agency may accept an offer for chattel based upon the combined final sales price of both the chattel and real estate.

(b) *Agency-financed sales.* The Agency may finance the purchase of chattel inventory property if the Agency has direct or guaranteed OL loan funds available and all applicable loan making requirements are met.

### §§ 767.156–767.200 [Reserved]

## Subpart E—Real Estate Property With Important Resources or Located in Special Hazard Areas

### § 767.201 Real estate inventory property with important resources.

In addition to the requirements established in subpart G of 7 CFR part 1940, the following apply to inventory property with important resources:

(a) *Wetland conservation easements.* The Agency will establish permanent wetland conservation easements to protect and restore certain wetlands that exist on inventory property prior to the sale of such property, regardless of whether the sale is cash or credit.

(1) The Agency establishes conservation easements on all wetlands or converted wetlands located on real estate inventory property that:

(i) Were not considered cropland on the date the property was acquired by the Agency; and

(ii) Were not used for farming at any time during the 5 years prior to the date of acquisition by the Agency.

(A) The Agency will consider property to have been used for farming if it was used for agricultural purposes including, but not limited to, cropland, pastures, hayland, orchards, vineyards, and tree farming.

(B) In the case of cropland, hayland, orchards, vineyards, or tree farms, the Agency must be able to demonstrate that the property was harvested for crops.

(C) In the case of pastures, the Agency must be able to demonstrate that the property was actively managed for grazing by documenting practices such

as fencing, fertilization, and weed control.

(2) The wetland conservation easement will provide for access to other portions of the property as necessary for farming or other uses.

(b) *Mandatory conservation easements.* The Agency will establish conservation easements to protect 100-year floodplains and other Federally-designated important resources. Federally-designated important resources include, but are not limited to:

(1) Listed or proposed endangered or threatened species;

(2) Listed or proposed critical habitats for endangered or threatened species;

(3) Designated or proposed wilderness areas;

(4) Designated or proposed wild or scenic rivers;

(5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;

(6) Coastal barriers included in Coastal Barrier Resource Systems;

(7) Natural landmarks listed on National Registry of Natural Landmarks; and

(8) Sole source aquifer recharge areas as designated by EPA.

(c) *Discretionary easements.* The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.

(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.

(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.

(d) *Conservation transfers.* The Agency may transfer real estate inventory property to a Federal or State agency provided the following conditions are met:

(1) The transfer of title must serve a conservation purpose;

(2) A predominance of the property must:

(i) Have marginal value for agricultural production;

(ii) Be environmentally sensitive; or

(iii) Have special management importance;

(3) The homestead protection rights of the previous owner have been exhausted;

(4) The Agency will notify the public of the proposed transfer; and

(5) The transfer is in the Agency's financial interest.

(e) *Use restrictions on real estate inventory property with important resources.* (1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.

(2) Lessees and purchasers of property with important resources or real property interests must allow the Agency or its representative to periodically inspect the property to determine if it is being used for conservation purposes.

### § 767.202 Real estate inventory property located in special hazard areas.

(a) The Agency considers the following to be special hazard areas:

(1) Mudslide hazard areas;

(2) Special flood areas; and

(3) Earthquake areas.

(b) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(c) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

### §§ 767.203–767.250 [Reserved]

## Subpart F—Exception Authority

### § 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the

adverse effect upon the its financial interest.

## PARTS 768—769 [Reserved]

## PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

Sec.
770.1 Purpose.
770.2 Abbreviations and definitions.
770.3 Eligibility requirements.
770.4 Authorized loan uses.
770.5 Loan limitations.
770.6 Rates and terms.
770.7 Security requirements.
770.8 Use of acquired land.
770.9 Appraisals.
770.10 Servicing.

AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 488.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

### §770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

### §770.2 Abbreviations and definitions.

(a) *Abbreviations.*

*FSA* Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

*ITLAP* Indian Tribal Land Acquisition Program.

*USPAP* Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

*Administrator* is the head of the Farm Service Agency.

*Agency* is Farm Service Agency (FSA).

*Appraisal* is an appraisal for the purposes of determining the market value of land (less value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

*Applicant* is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

*Loan funds* refers to money loaned under this part.

*Native American tribe* is:

(1) An Indian tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Rental value* for the purpose of rental value write-downs, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to §770.10(e)(4).

*Reservation* is lands or interests in land within:

(1) The Native American tribe's reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Reserve* is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001 which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

*Tribal corporation* is a corporation established pursuant to the Indian Reorganization Act.

[66 FR 1567, Jan. 9, 2001, as amended at 70 FR 7167, Feb. 11, 2005; 72 FR 51990, Sept. 12, 2007]

### §770.3 Eligibility requirements.

An applicant must:

(a) Submit a completed Agency application form;

(b) Except for refinancing activities authorized in §770.4(c), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

(c) Be a Native American tribe or a tribal corporation of a Native American tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principles, or another financial accounting method acceptable to Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

(d) Be unable to obtain sufficient credit elsewhere at reasonable rates

and terms for purposes established in § 770.4;

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American tribe's land and other enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

(f) Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

(g) Not be subject to a judgment lien against the tribe's property arising out of a debt to the United States.

(h) Have not received a write-down as provided in § 770.10(e) within the preceding 5 years.

[66 FR 1567, Jan. 9, 2001, as amended at 70 FR 7167, Feb. 11, 2005]

### § 770.4 Authorized loan uses.

Loan funds may only be used to:

(a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's reservation which will be used for the benefit of the tribe or its members.

(b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.

(c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:

(1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;

(2) The applicant could not acquire an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and

(4) The purchase of such land is consistent with all other applicable requirements of this part.

(d) Pay for the costs of any appraisal conducted pursuant to this part.

### § 770.5 Loan limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M to subpart G of part 1940 of this title.

(b) The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

(c) Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

### § 770.6 Rates and terms.

(a) *Term.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in § 770.10(b) the interest rate will be fixed for the life of the loan.

### § 770.7 Security requirements.

(a) The applicant will take appropriate action to obtain and provide security for the loan.

(b) A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.

(1) If a mortgage or deed of trust is to be obtained on trust or restricted land and the applicant's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.

(2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.

(c) The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:

(1) The Agency determines that an assignment of income provides as good or better security; and

(2) Prior approval of the Administrator has been obtained.

### § 770.8 Use of acquired land.

(a) *General.* Subject to § 770.5(d) land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:

(1) The Agency provides prior written approval of the action;

(2) The Agency determines that the borrower's loan obligations to the Agency are adequately secured; and

(3) The borrower's ability to repay the loan is not impaired.

(b) *Title.* Title to land acquired with a loan made under this part may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

### § 770.9 Appraisals.

(a) The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.

(b) Appraisals must be completed in accordance with § 761.7 of this chapter.

### § 770.10 Servicing.

(a) *Reamortization*—(1) *Eligibility.* The Agency may consider reamortization of a loan provided:

(i) The borrower submits a completed Agency application form; and

(ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or

(iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.

(2) *Terms.* The term of a loan may not be extended beyond 40 years from the date of the original note.

(i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and

(ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security priority.

(3) *Consolidation of notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:

(1) The borrower submits a completed Agency application form;

(2) The loan was made more than 5 years prior to the application for the interest reduction; and

(3) The Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section.

(c) *Deferral.* The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:

(1) The borrower submits a completed Agency application form;

(2) The borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and

(3) The borrower will be able to meet all financial commitments, including the Agency payments, after the deferral period has ended.

(d) *Land exchanges.* In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required

unless the Agency determines any remaining land or other loan security is adequate security for the loan.

(e) *Debt write-down*—(1) *Application*. The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

(i) The borrower must submit a completed Agency application form;

(ii) If the borrower applies and is determined eligible for a land value and a rental value write-down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.

(2) *Eligibility*. To be eligible for debt write-down, the borrower (in the case of a tribal corporation, the Native American tribe of the borrower) must:

(i) Be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:

(A) The Native American tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;

(B) The tribal unemployment rate exceeds 50 percent;

(3) *Land value write-down*. The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided:

(i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The loan was made more than 5 years prior to the application for land value write-down;

(iv) The loan has not previously been written down under paragraph (e)(4) of this section and has not been written down within the last 5 years under this paragraph, and

(v) The borrower must meet the eligibility requirements of paragraphs (a)(1)(ii) or (iii) of this section.

(4) *Rental value write-down*. The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period provided:

(i) The loan was made more than 5 years prior to the rental value writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a record of any actual rents received for the land for the preceding 5 years, which will be used to calculate the average rental value. This record must be certified by the Department of the Interior. For land that has not been leased or has not received any rental income, the borrower must provide a market value rent study report for the preceding 5 years, which identifies the average annual rental value based on the market data. The market value rent study report must be prepared by a certified general appraiser and meet the requirements of USPAP.

(iv) The borrower has not previously received a write-down under this paragraph and has not had a loan written down within the last 5 years under paragraph (e)(3) of this section, and

(v) The borrower must meet the eligibility requirements of paragraph (a)(1)(ii) or (iii) of this section.

(f) *Release of reserve*. Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following:

(1) A written request is received providing details of the use of the funds;

(2) The loan is not delinquent;

(3) The loan adequately secured by a general assignment of tribal income.

[66 FR 1567, Jan. 9, 2001; 66 FR 47877, Sept. 14, 2001, as amended at 70 FR 7167, Feb. 11, 2005; 72 FR 51990, Sept. 12, 2007]

# PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

Sec.

771.1 Introduction.
771.2 Abbreviations and definitions.
771.3 [Reserved]
771.4 Eligibility requirements.
771.5 Loan purposes.
771.6 Environmental requirements.
771.7 Equal opportunity and non-discrimination requirements.
771.8 Other Federal, State, and local requirements.
771.9 Interest rates, terms, security requirements, and repayment.
771.10 [Reserved]
771.11 Application.
771.12 Funding applications.
771.13 Loan closing.
771.14 Loan monitoring.
771.15 Loan servicing.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104–180, 110 Stat. 1569.

SOURCE: 67 FR 59771, Sept. 24, 2002, unless otherwise noted.

## §771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

## §771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

*APHIS* means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

*FSA* means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

*Extra payment* means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

*Non-profit corporation* means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

*Restructure* means to modify the terms of a loan. This may include a modification of the interest rate and/or repayment terms of the loan.

*Security* means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

*State organization* means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

## §771.3 [Reserved]

## §771.4 Eligibility requirements.

(a) An eligible applicant must:

(1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by APHIS as to an organization's qualification);

(2) Have the appropriate charter and/or legal authority as a non-profit corporation or as a State organization specifically organized to operate the boll weevil eradication program in any State, biological, or geographic region of any State in which it operates;

(3) Possess the legal authority to enter into contracts, including debt instruments;

(4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-eradication program is underway or scheduled to begin no later than the

fiscal year following the fiscal year in which the application is submitted;

(5) Have the legal authority to pledge producer assessments as security for loans from FSA.

(b) Individual producers are not eligible for loans.

### § 771.5 Loan purposes.

(a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:

(1) Purchase or lease of supplies and equipment;

(2) Operating expenses, including but not limited to, travel and office operations;

(3) Salaries and benefits.

(b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

### § 771.6 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory environmental requirements have been complied with.

### § 771.7 Equal opportunity and non-discrimination requirements.

No recipient of a boll weevil eradication loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

### § 771.8 Other Federal, State, and local requirements.

(a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.

(b) Borrowers are required to comply with all applicable:

(1) Federal, State, or local laws;

(2) Regulatory commission rules; and

(3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(i) Borrowing money, pledging security, and raising revenues for repayment of debt;

(ii) Accounting and financial reporting; and

(iii) Protection of the environment.

### § 771.9 Interest rates, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested.

(b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program as determined by FSA, but may not exceed 10 years.

(c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security, including but not limited to the following:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;

(ii) Investments and deposits of the applicant; and

(iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue. The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

### § 771.10 [Reserved]

### § 771.11 Application.

A complete application will consist of the following:

(a) An application for Federal assistance (available in any FSA office);

(b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;

(c) Copies of the applicant's authorizing State legislation and organizational documents;

(d) List of all directors and officers of the applicant;

(e) Copy of the most recent audited financial statements along with updates through the most recent quarter;

(f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;

(g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;

(h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

### § 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

### § 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

### § 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit

any financial or other information within 14 days unless the data requested is not available within that time frame.

### § 771.15 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 766 are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

[67 FR 59771, Sept. 24, 2002, as amended at 72 FR 64121, Nov. 15, 2007]

## PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

772.1 Policy.
772.2 Abbreviations and definitions.
772.3 Compliance.
772.4 Environmental requirements.
772.5 Security maintenance.
772.6 Subordination of security.
772.7 Leasing minor program loan security.
772.8 Sale or exchange of security property.
772.9 Releases.
772.10 Transfer and assumption—AMP loans.
772.11 Transfer and assumption—IMP loans.
772.12 Graduation.
772.13 Delinquent account servicing.
772.14 Reamortization of AMP loans.
772.15 Protective advances.
772.16 Liquidation.
772.17 Equal Opportunity and non-discrimination requirements.
772.18 Exception authority.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

SOURCE: 68 FR 69949, Dec. 16, 2003, unless otherwise noted.

### § 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

### § 772.2 Abbreviations and Definitions.

(a) *Abbreviations.*

*AMP* Association-Type Minor Program loan;
*CFR* Code of Federal Regulations;
*FO* Farm Ownership Loan;
*FSA* Farm Service Agency;
*IMP* Individual-Type Minor Program loan;
*OL* Operating Loan;
*USDA* United States Department of Agriculture.

(b) *Definitions.*

*Association-Type Minor Program loans (AMP):* Loans to Grazing Associations and Irrigation and Drainage Associations.

*Entity:* Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

*Graduation:* The requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

*Individual-type Minor Program loans (IMP):* Non-Farm Enterprise or Recreation loans to individuals.

*Member:* Any individual who has an ownership interest in the entity which has received the Minor Program loan.

*Minor Program:* Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA

*Review official:* An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

### §772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to federally conducted programs contained in 7 CFR parts 15d and 15e.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

(c) *Frequency and timing.* Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

(d) *Violations.* If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of §772.16 of this part.

### §772.4 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.

### §772.5 Security maintenance.

(a) *General.* Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement and promissory note.

(b) *Security inspection.* The Agency will inspect real estate that is security for a Minor Program loan at least once every 3 years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

(c) *Violations.* If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

(1) For chattel security, service the account according to 7 part 1962, subpart A. If any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval and release provisions in that subpart shall apply.

(2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.

(3) For real estate security for IMP loans, service the account according to 7 CFR part 1965, subpart A.

### §772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

(1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower,'' for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. ''Controlled substance,'' for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.

(b) *Application*. To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal prepared in accordance with § 761.7 of this chapter, if the request is for a subordination of more than $10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

### § 772.7 Leasing minor program loan security.

(a) *Eligibility*. The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and

(6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application*. The borrower must submit a written request for Agency consent to lease the property.

### § 772.8 Sale or exchange of security property.

(a) For AMP loans.

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

(i) The property is sold for market value based on a current appraisal prepared in accordance with § 761.7 of this chapter.

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the following non-discrimination covenant:

The property described herein was obtained or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued

pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, or for so long as the purchaser owns it, whichever is later.

(iii) The remaining security for the loan is adequate or will not change after the transaction.

(iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

(i) The Agency will obtain a lien on the property acquired in the exchange;

(ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;

(iii) The AMP loan will be as adequately secured after the transaction as before; and

(iv) It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.

(b) For IMP loans.

(1) A sale or exchange of chattel that is serving as security is governed by 7 CFR part 1962, subpart A.

(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by 7 CFR part 1965, subpart A.

[68 FR 69949, Dec. 16, 2003, as amended at 69 FR 18741, Apr. 8, 2004]

### § 772.9 Releases.

(a) *Security*. Minor Program liens may be released when:

(1) The debt is paid in full;

(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or

(3) An exchange in accordance with § 772.8 has been concluded.

(b) *Borrower liability*. The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR part 761, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with § 772.10 in conjunction with a transfer and assumption.

(c) *Servicing of debt not satisfied through liquidation*. Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900–904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.

[68 FR 69949, Dec. 16, 2003, as amended at 69 FR 7679, Feb. 19, 2004; 72 FR 64121, Nov. 15, 2007]

### § 772.10 Transfer and assumption—AMP loans.

(a) *Eligibility*. The Agency may approve transfers and assumptions of AMP loans when:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan;

(2) The transfer will not harm the Government or adversely affect the Agency's security position;

(3) The transferee will continue with the original purpose of the loan;

(4) The transferee will assume an amount at least equal to the present market value of the loan security;

(5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;

(6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and

(7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.

(b) *Withdrawal.* Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

(1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;

(2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and

(3) The transfer will not adversely affect collection of the AMP loan.

(c) *Requesting a transfer and assumption.* The transferor/borrower and transferee/applicant must submit:

(1) The written consent of any other lienholder, if applicable.

(2) A current balance sheet and cash flow statement.

(d) *Terms.* The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and assumption will be approved by the Agency.

(e) *Release of liability.* Transferors may be released from liability with respect to an AMP loan by the Agency when:

(1) The full amount of the loan is assumed; or

(2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with § 772.9(c).

### § 772.11 Transfer and assumption—IMP loans.

Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 765. Any remaining transferor liability will be serviced in accordance with § 772.9(c) of this subpart.

[68 FR 69949, Dec. 16, 2003, as amended at 72 FR 64121, Nov. 15, 2007]

### § 772.12 Graduation.

(a) *General.* This section only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.

(b) *Graduation reviews.* Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.

(1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.

(2) All IMP borrowers classified as ''commercial'' or ''standard'' by the agency must be reviewed at least every 2 years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.

(c) *Criteria.* Borrowers must graduate from the Minor Programs as follows:

(1) Borrowers with IMP loans that are classified as ''commercial'' or ''standard'' must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.

(2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower's financial condition has significantly improved.

[68 FR 69949, Dec. 16, 2003, as amended at 72 FR 64121, Nov. 15, 2007]

### § 772.13 Delinquent account servicing.

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account according to § 772.16.

(b) *IMP loans.* Delinquent IMP borrowers will be serviced according to 7 CFR part 3, part 766, and part 1951, subpart C, concerning internal agency offset and referral to the Department of the Treasury Offset Program and

Treasury Cross-Servicing (or successor regulations).

[68 FR 69949, Dec. 16, 2003, as amended at 72 FR 64121, Nov. 15, 2007]

### §772.14 Reamortization of AMP loans.

The Agency may approve reamortization of AMP loans provided:

(a) There is no extension of the final maturity date of the loan;

(b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;

(c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and

(d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control.

### §772.15 Protective advances.

(a) The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

### §772.16 Liquidation.

When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in §772.13, or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 766. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.

[68 FR 69949, Dec. 16, 2003, as amended at 72 FR 64121, Nov. 15, 2007]

### §772.17 Equal opportunity and nondiscrimination requirements.

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act and the Department's civil rights policy in 7 CFR part 15d.

[72 FR 64121, Nov. 15, 2007]

### §772.18 Exception authority.

Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.

## PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

773.1 Introduction.
773.2 Definitions.
773.3 Appeals.
773.4–773.5 [Reserved]
773.6 Eligibility requirements.
773.7 Loan uses.
773.8 Limitations.
773.9 Environmental compliance.
773.10 Other Federal, State, and local requirements.
773.11–773.17 [Reserved]
773.18 Loan application.
773.19 Interest rate, terms, security requirements, and repayment.
773.20 Funding applications.
773.21 Loan decision, closing and fees.
773.22 Loan servicing.
773.23 Exception.

AUTHORITY: Pub. L. 106–224.

SOURCE: 65 FR 76117, Dec. 6, 2000, unless otherwise noted.

### §773.1 Introduction.

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These

regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

### § 773.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Apple producer* is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

*Security* is real or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

*USPAP* is Uniform Standards of Professional Appraisal Practice.

### § 773.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

### §§ 773.4–773.5 [Reserved]

### § 773.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible for a Special Apple Program Loan:

(a) The loan applicant must be an apple producer;

(b) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(c) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(d) At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(e) At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(f) The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information; and

(g) The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable

credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

### §773.7 Loan uses.

Loan funds may be used for any of the following purposes related to the production or marketing of apples:

(a) Payment of costs associated with reorganizing a farm to improve its profitability;

(b) Payment of annual farm operating expenses;

(c) Purchase of farm equipment or fixtures;

(d) Acquiring, enlarging, or leasing a farm;

(e) Making capital improvements to a farm;

(f) Refinancing indebtedness;

(g) Purchase of cooperative stock for credit, production, processing or marketing purposes; or

(h) Payment of loan closing costs.

### §773.8 Limitations.

(a) The maximum loan amount any individual or business entity may receive under the Special Apple Loan Program is limited to $500,000.

(b) The maximum loan is further limited to $300 per acre of apple trees in production in 1999 or 2000, whichever is greater.

(c) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(d) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

### §773.9 Environmental compliance.

(a) Except as otherwise specified in this section, prior to approval of any loan, an environmental evaluation will be completed by the Agency to determine if the proposed action will have any adverse impacts on the human environment and cultural resources. Loan applicants will provide all information necessary for the Agency to make its evaluation.

(b) The following loan actions were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. Therefore the following loan actions are categorically excluded from the requirements of an environmental evaluation:

(1) Payment of legal costs associated with reorganizing a farm to improve its profitability as long as there will be no changes in the land's use or character;

(2) Purchase of farm equipment which will not be affixed to a permanent mount or position;

(3) Acquiring or leasing a farm;

(4) Refinancing an indebtedness not greater than $30,000;

(5) Purchase of stock in a credit association or in a cooperative which deals with the production, processing or marketing of apples; and

(6) Payment of loan closing costs.

(c) The loan actions listed in paragraph (b) of this section were also reviewed in accordance with section 106 of the National Historic Preservation Act (NHPA). It was determined that these loan actions are non-undertakings with no potential to affect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.

(d) If adverse environmental impacts, either direct or indirect, are identified, the Agency will complete an environmental assessment in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(e) In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.

(1) The Agency will not accept real estate as collateral which has significant environmental risks.

(2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.

### § 773.10 Other Federal, State, and local requirements.

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

### §§ 773.11–773.17 [Reserved]

### § 773.18 Loan application.

(a) A complete application will consist of the following:

(1) A completed Agency application form;

(2) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(3) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(4) A balance sheet on the applicant;

(5) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(6) The last 3 years of production and income and expense information;

(7) Payment to the Agency for ordering a credit report; and

(8) Any additional information required by the Agency to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security.

(b) Except as required in § 773.19(e), the Agency will waive requirements for a complete application, listed in paragraphs (a)(5) and (a)(6) of this section, for requests of $30,000 or less.

### § 773.19 Interest rate, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by the Agency and available in each Agency Office, based upon the cost of Government borrowing for loans of similar maturities.

(b) *Terms.* The loan term will be for up to 3 years, based upon the useful life of the security offered.

(c) *Security requirements.* The Agency will take a lien on the following security, if available, as necessary to adequately secure the loan:

(1) Real estate;

(2) Chattels;

(3) Crops;

(4) Other assets owned by the applicant; and

(5) Assets owned and pledged by a third party.

(d) *Documentation of security value.* (1) For loans that are for $30,000 or less, collateral value will be based on the best available, verifiable information.

(2) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of three times the loan amount or greater, collateral value will be based on tax assessment of real estate and depreciation schedules of chattels, as applicable, less any existing liens.

(3) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of less than three times the loan amount, collateral value will be based on an appraisal. Such appraisals must be obtained by the applicant, at the applicant's expense and acceptable to the Agency. Appraisals of real estate must be completed in accordance with USPAP.

(e) *Repayment.* (1) All loan applicants must demonstrate that the loan can be repaid.

(2) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of three times the loan amount or greater, repayment ability will be considered adequate without further documentation.

(3) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of less than three times the loan amount, repayment ability must be demonstrated

using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding § 773.18 of this part.

(4) For loans that are for more than $30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

(f) *Creditworthiness.* All loan applicants must have an acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

### § 773.20 Funding applications.

Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

### § 773.21 Loan decision, closing, and fees.

(a) *Loan decision.* (1) The Agency will approve a loan if it determines that:

(i) The loan can be repaid;

(ii) The proposed use of loan funds is authorized;

(iii) The applicant has been determined eligible;

(iv) All security requirements have been, or will be met at closing;

(vi) All other pertinent requirements have been, or will be met at closing.

(2) The Agency will place conditions upon loan approval as necessary to protect its interest.

(b) *Loan closing.* (1) The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing;

(2) There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved; and

(2) The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

### § 773.22 Loan servicing.

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766 during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with 7 CFR part 766, subpart H.

[72 FR 64121, Nov. 15, 2007]

### § 773.23 Exception.

The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

## PART 774—Emergency Loan for Seed Producers Program

Sec.

774.1 Introduction.
774.2 Definitions.
774.3 Appeals.
774.4–774.5 [Reserved]
774.6 Eligibility requirements.
774.7 [Reserved]
774.8 Limitations.
774.9 Environmental requirements.
774.10 Other Federal, State, and local requirements.
774.11–774.16 [Reserved]
774.17 Loan application.
774.18 Interest rate, terms, and security requirements.
774.19 Processing applications.
774.20 Funding applications.
774.21 [Reserved]
774.22 Loan closing.

774.23 Loan servicing.
774.24 Exception.

AUTHORITY: Pub. L. 106–224

SOURCE: 65 FR 76119, Dec. 6, 2000, unless otherwise noted.

### § 774.1 Introduction.

The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.

### § 774.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

*Seed producer* is a farmer that produced a 1999 crop of grass, forage, vegetable, or sorghum seed for sale to AgriBiotech under contract.

### § 774.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

### §§ 774.4–774.5 [Reserved]

### § 774.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program;

(a) The loan applicant must be a seed producer;

(b) The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from acontract to grow seeds in the United States;

(c) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(d) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(e) At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(f) At loan closing, the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(g) The loan applicant, in past and current dealings with the Agency, must not have provided the Agency with false information.

### § 774.7 [Reserved]

### § 774.8 Limitations.

(a) The maximum loan amount any individual or business entity may receive will be 65% of the value of the

timely filed proof of claim against AgriBiotech in the bankruptcy proceeding as determined by the Agency.

(b) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(c) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

### § 774.9 Environmental requirements.

The loan actions in this part were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. These loan actions are categorically excluded from the requirements of an environmental evaluation due to the fact that the loan funds would be utilized to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.

### § 774.10 Other Federal, State, and local requirements.

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

### § 774.11–774.16 [Reserved]

### § 774.17 Loan application.

A complete application will consist of the following:

(a) A completed Agency application form;

(b) Proof of a bankruptcy claim in the AgriBiotech bankruptcy proceedings;

(c) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(d) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(e) A balance sheet on the applicant; and

(f) Any other additional information the Agency needs to determine the eligibility of the applicant and the application of any Federal, State or local laws.

### § 774.18 Interest rate, terms and security requirements.

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 36 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

(2) Thereafter interest will begin to accrue at the regular rate for an Agency Farm operating-direct loan (available in any Agency office).

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note.

(2) However, any principal remaining thereafter will be amortized over a term of 7 years at the Farm operating-direct loan interest rate (available in any Agency office). If the loan is not paid in full during this time and default occurs, servicing will proceed in accordance with 7 CFR part 766, subpart H.

(c) *Security requirements.* (1) The Agency will require a first position pledge and assignment of the applicant's monetary claim in the AgriBiotech bankruptcy estate to secure the loan.

(2) If the applicant has seed remaining in their possession that was produced under contract to AgriBiotech, the applicant also will provide the Agency with a first lien position on this seed. It is the responsibility of the applicant to negotiate with any existing lienholders to secure the Agency's first lien position.

[65 FR 76119, Dec. 6, 2000, as amended at 68 FR 7696, Feb. 18, 2003; 72 FR 64121, Nov. 15, 2007]

### § 774.19 Processing applications.

Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending applications will be considered withdrawn.

### § 774.20 Funding applications.

Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.

### § 774.21 [Reserved]

### § 774.22 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

### § 774.23 Loan servicing.

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with 7 CFR part 766, subpart H.

[72 FR 64121, Nov. 15, 2007]

### § 774.24 Exception.

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

## PART 780—APPEAL REGULATIONS

Sec.

780.1 General.
780.2 Definitions.
780.3 Reservations of authority.
780.4 Applicability.
780.5 Decisions that are not appealable.
780.6 Appeal procedures available when a decision is appealable.
780.7 Reconsideration.
780.8 County committee appeals.
780.9 Mediation.
780.10 State committee appeals.
780.11 Appeals of NRCS determinations.
780.12 Appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978.
780.13 Verbatim transcripts.
780.14 [Reserved]
780.15 Time limitations.
780.16 Implementation of final agency decisions.
780.17 Judicial review.

AUTHORITY: 5 U.S.C. 301 and 574; 7 U.S.C. 6995; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

SOURCE: 70 FR 43266, July 27, 2005, unless otherwise noted.

### § 780.1 General.

This part sets forth rules applicable to appealability reviews, reconsiderations, appeals and alternative dispute resolution procedures comprising in aggregate the informal appeals process of FSA. FSA will apply these rules to facilitate and expedite participants' submissions and FSA reviews of documentary and other evidence material to resolution of disputes arising under agency program regulations.

### § 780.2 Definitions.

For purposes of this part:

*1994 Act* means the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

*Adverse decision* means a program decision by an employee, officer, or committee of FSA that is adverse to the participant. The term includes any denial of program participation, benefits, written agreements, eligibility, etc., that results in a participant receiving less funds than the participant believes

should have been paid or not receiving a program benefit to which the participant believes the participant was entitled.

*Agency* means FSA and its county and State committees and their personnel, CCC, NRCS, and any other agency or office of the Department which the Secretary may designate, or any successor agency.

*Agency record* means all documents and materials maintained by FSA that are related to the adverse decision under review that are compiled and reviewed by the decision-maker or that are compiled in the record provided to the next level reviewing authority.

*Appeal* means a written request by a participant asking the next level reviewing authority within FSA to review a decision. However, depending on the context, the term may also refer to a request for review by NAD.

*Appealability review* means review of a decision-maker's determination that a decision is not appealable under this part. That decision is, however, subject to review according to §780.5 or 7 CFR part 11 to determine whether the decision involves a factual dispute that is appealable or is, instead, an attempt to challenge generally applicable program policies, provisions, regulations, or statutes that were not appealable.

*Appellant* means any participant who appeals or requests reconsideration or mediation of an adverse decision in accordance with this part or 7 CFR part 11.

*Authorized representative* means a person who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in a reconsideration, mediation, or appeal.

*CCC* means the Commodity Credit Corporation, a wholly owned Government corporation within USDA.

*Certified State* means, in connection with mediation, a State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 785.

*Confidential mediation* means a mediation process in which neither the mediator nor parties participating in mediation will disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or 7 CFR part 785.

*County committee* means an FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

*Determination of NRCS* means a decision by NRCS made pursuant to Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), as amended.

*FSA* means the Farm Service Agency, an agency within USDA.

*Final decision* means a program decision rendered by an employee or officer of FSA pursuant to delegated authority, or by the county or State committee upon written request of a participant. A decision that is otherwise final shall remain final unless the decision is timely appealed to the State committee or NAD. A decision of FSA made by personnel subordinate to the county committee is considered ''final'' for the purpose of appeal to NAD only after that decision has been appealed to the county committee under the provisions of this part.

*Hearing* means an informal proceeding on an appeal to afford a participant opportunity to present testimony, documentary evidence, or both to show why an adverse decision is in error and why the adverse decision should be reversed or modified.

*Implement* means the taking of action by FSA, NRCS, or CCC that is necessary to effectuate fully and promptly a final decision.

*Mediation* means a technique for resolution of disputes in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but in which the mediator has no authoritative decision making power.

*Mediator* means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

*NAD* means the USDA National Appeals Division established pursuant to the 1994 Act.

*NAD rules* means the NAD rules of procedure published at 7 CFR part 11, implementing title II, subtitle H of the 1994 Act.

*Non-certified State* means a State that is not approved to participate in the certified mediation program under 7 CFR part 785, or any successor regulation.

*NRCS* means the Natural Resources Conservation Service of USDA.

*Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of FSA to which the regulations in this part apply is affected by a decision of FSA. The term includes anyone meeting this definition regardless of whether, in the particular proceeding, the participant is an appellant or a third party respondent. The term does not include individuals or entities whose claim(s) arise under the programs excluded in the definition of ''participant'' published at 7 CFR 11.1.

*Qualified mediator* means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

*Reconsideration* means a subsequent consideration of a program decision by the same level of decision-maker or reviewing authority.

*Reviewing authority* means a person or committee assigned the responsibility of making a decision on reconsideration or an appeal filed by a participant in accordance with this part.

*State committee* means an FSA State committee established in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) including, where appropriate, the Director of the Caribbean Area FSA office for Puerto Rico and the Virgin Islands.

*State Conservationist* means the NRCS official in charge of NRCS operations within a State, as set forth in part 600 of this title.

*State Executive Director* means the executive director of an FSA State office with administrative responsibility for a FSA State office as established under the Reorganization Act.

*USDA* means the U.S. Department of Agriculture.

*Verbatim transcript* means an official, written record of proceedings in an appeal hearing or reconsideration of an adverse decision appealable under this part.

### § 780.3 Reservations of authority.

(a) Representatives of FSA and CCC may correct all errors in data entered on program contracts, loan agreements, and other program documents and the results of the computations or calculations made pursuant to the contract or agreement. FSA and CCC will furnish appropriate notice of such corrections when corrections are deemed necessary.

(b) Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by a subordinate employee of FSA or its county and State committees, or CCC.

### § 780.4 Applicability.

(a)(1) Except as provided in other regulations, this part applies to decisions made under programs and by agencies, as set forth herein:

(i) Decisions in programs administered by FSA to make, guarantee or service farm loans set forth in chapters VII and XVIII of this title relating to farm loan programs;

(ii) Decisions in those domestic programs administered by FSA on behalf of CCC through State and county committees, or itself, which are generally set forth in chapters VII and XIV of this title, or in part VII relating to conservation or commodities;

(iii) Appeals from adverse decisions, including technical determinations, made by NRCS under title XII of the Food Security Act of 1985, as amended;

(iv) Penalties assessed by FSA under the Agricultural Foreign Investment Disclosure Act of 1978, 5 U.S.C. 501 *et seq.*;

(v) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171; and

(vi) Other programs to which this part is made applicable by specific program regulations or notices in the FEDERAL REGISTER.

(2) The procedures contained in this part may not be used to seek review of statutes or regulations issued under Federal law or review of FSA's generally applicable interpretations of such laws and regulations.

(3) For covered programs, this part is applicable to any decision made by an employee of FSA or of its State and county committees, CCC, the personnel of FSA, or CCC, and by the officials of NRCS to the extent otherwise provided in this part, and as otherwise may be provided in individual program requirements or by the Secretary.

(b) With respect to matters identified in paragraph (a) of this section, participants may request appealability review, reconsideration, mediation, or appeal under the provisions of this part, of decisions made with respect to:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program; and

(4) Determinations under Title XII of the Food Security Act of 1985, as amended, made by NRCS.

(c) Only a participant directly affected by a decision may seek administrative review under § 780.5(c).

### § 780.5 Decisions that are not appealable.

(a) Decisions that are not appealable under this part shall include the following:

(1) Any general program provision or program policy or any statutory or regulatory requirement that is applicable to similarly situated participants;

(2) Mathematical formulas established under a statute or program regulation and decisions based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions that expressly make agency decisions final or their implementing regulations;

(4) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171;

(5) Decisions of other Federal or State agencies;

(6) Requirements and conditions designated by law to be developed by agencies other than FSA.

(7) Disapprovals or denials because of a lack of funding.

(8) Decisions made by the Administrator or a Deputy Administrator.

(b) A participant directly affected by an adverse decision that is determined not to be subject to appeal under this part may request an appealability review of the determination by the State Executive Director of the State from which the underlying decision arose in accordance with § 780.15.

(c) Decisions that FSA renders under this part may be reviewed by NAD under part 11 of this title to the extent otherwise allowed by NAD under its rules and procedures. An appealability determination of the State Executive Director in an administrative review is considered by FSA to be a new decision.

### § 780.6 Appeal procedures available when a decision is appealable.

(a) For covered programs administered by FSA for CCC, the following procedures are available:

(1) Appeal to the county committee of decisions of county committee subordinates;

(2) Reconsideration by the county committee;

(3) Appeal to the State committee;

(4) Reconsideration by the State committee;

(5) Appeal to NAD;

(6) Mediation under guidelines specified in § 780.9.

(b) For decisions in agricultural credit programs administered by FSA, the following procedures are available:

(1) Reconsideration under § 780.7;

(2) Mediation under § 780.9;

(3) Appeal to NAD.

(c) For programs and regulatory requirements under Title XII of the Food Security Act of 1985, as amended, to the extent not covered by paragraph (a) of this section, the following procedures are available:

(1) Appeal to the county committee;

(2) Appeal to the State committee;

(3) Mediation under § 780.9;

(4) Appeal to NAD.

### § 780.7 Reconsideration.

(a) A request for reconsideration must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as will be instructed in the adverse decision notification.

(b) A participant's right to request reconsideration is waived if, before requesting reconsideration, a participant:

(1) Has requested and begun mediation of the adverse decision;

(2) Has appealed the adverse decision to a higher reviewing authority in FSA; or

(3) Has appealed to NAD.

(c) Provided a participant has not waived the right to request reconsideration, FSA will consider a request for reconsideration of an adverse decision under these rules except when a request concerns a determination of NRCS appealable under the procedures in § 780.11, the decision has been mediated, the decision has previously been reconsidered, or the decision-maker is the Administrator, Deputy Administrator, or other FSA official outside FSA's informal appeals process.

(d) A request for reconsideration will be deemed withdrawn if a participant requests mediation or appeals to a higher reviewing authority within FSA or requests an appeal by NAD before a request for reconsideration has been acted upon.

(e) The Federal Rules of Evidence do not apply to reconsiderations. Proceedings may be confined to presentations of evidence to material facts, and evidence or questions that are irrelevant, unduly repetitious, or otherwise inappropriate may be excluded.

(f) The official decision on reconsideration will be the decision letter that is issued following disposition of the reconsideration request.

(g) A decision on reconsideration is a new decision that restarts applicable time limitations periods under § 780.15 and part 11 of this title.

[70 FR 43266, July 27, 2005, as amended at 71 FR 30573, May 30, 2006]

### § 780.8 County committee appeals.

(a) A request for appeal to a county committee concerning a decision of a subordinate of the county committee must be submitted by a participant or by a participant's authorized representative in writing and must be addressed to the office in which the subordinate is employed.

(b) The Federal Rules of Evidence do not apply to appeals to a county committee. However, a county committee may confine presentations of evidence to material facts and may exclude evidence or questions that are irrelevant, unduly repetitious, or otherwise inappropriate.

(c) The official county committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

(d) Deliberations shall be in confidence except to the extent that a county committee may request the assistance of county committee or FSA employees during deliberations.

### § 780.9 Mediation.

(a) Any request for mediation must be submitted after issuance of an adverse decision but before any hearing in an appeal of the adverse decision to NAD.

(b) An adverse decision and any particular issues of fact material to an adverse decision may be mediated only once:

(1) If resolution of an adverse decision is not achieved in mediation, a participant may exercise any remaining appeal rights under this part or appeal to NAD in accordance with part 11 of this title and NAD procedures.

(2) If an adverse decision is modified as a result of mediation, a participant may exercise any remaining appeal rights as to the modified decision under this part or appeal to NAD, unless such appeal rights have been waived pursuant to agreement in the mediation.

(c) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory and regulatory provisions governing the program and FSA's generally applicable interpretation of those statutes and regulatory provisions.

(d) FSA will participate in mediation in good faith and to do so will take steps that include the following:

(1) Designating a representative in the mediation;

(2) Instructing the representative that any agreement reached during, or as a result of, the mediation process must conform to the statutes, regulations, and FSA's generally applicable interpretations of statutes and regulations governing the program;

(3) Assisting as necessary in making pertinent records available for review and discussion during the mediation; and

(4) Directing the representative to forward any written agreement proposed in mediation to the appropriate FSA official for approval.

(e) Mediations will be treated in a confidential manner consistent with the purposes of the mediation.

(f) For requests for mediation in a Certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will include notice of the opportunity for mediation, including a mailing address and facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) If the participant desires mediation, the participant must request mediation in writing by contacting the certified mediation program or such other contact as may be designated by FSA in an adverse decision letter. The request for mediation must include a copy of the adverse decision to be mediated.

(2) Participants in mediation may be required to pay fees established by the mediation program.

(3) A listing of certified State mediation programs and means for contact may be found on the FSA Web site at *http://www.usda.gov/fsa/disputemediation.htm.*

(g) For requests for mediation in a Non-certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will, as appropriate, include notice of the opportunity for mediation, including the mailing address of the State Executive Director and a facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) It is the duty of the participant to contact the State Executive Director in writing to request mediation. The request for mediation must include a copy of the adverse decision to be mediated.

(2) If resources are available for mediation, the State Executive Director will select a qualified mediator and provide written notice to the participant that mediation is available and the fees that the participant will incur for mediation.

(3) If the participant accepts such mediation, FSA may give notice of the mediation to interested parties and third parties whose interests are known to FSA.

(h) Mediation will be considered to be at an end on that date set out in writing by the mediator or mediation program, as applicable, or when the participant receives written notice from the State Executive Director that the State Executive Director believes the mediation is at an impasse, whichever is earlier.

(i) To provide for mediator impartiality:

(1) No person shall be designated as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) As a condition of retention to mediate in an adverse program dispute under this part, the mediator shall

agree not to serve thereafter as an advocate or representative for a participant or party in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA, or any other Federal Government department.

[70 FR 43266, July 27, 2005, as amended at 71 FR 30573, May 30, 2006]

### § 780.10 State committee appeals.

(a) A request for appeal to the State committee from a decision of a county committee must be submitted by a participant or by a participant's authorized representative in writing and addressed to the State Executive Director.

(b) A participant's right to appeal a decision to a State committee is waived if a participant has appealed the adverse decision to NAD before requesting an appeal to the State Committee.

(c) If a participant requests mediation or requests an appeal to NAD before a request for an appeal to the State Committee has been acted upon, the appeal to the State Committee will be deemed withdrawn. The deemed withdrawal of a participant's appeal to the State Committee will not preclude a subsequent request for a State Committee hearing on appealable matters not resolved in mediation.

(d) The Federal Rules of Evidence do not apply in appeals to a State committee. Notwithstanding, a State committee may confine presentations of evidence to material facts and exclude evidence or questions as irrelevant, unduly repetitious, or otherwise inappropriate.

(e) The official record of a State committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

(f) Deliberations shall be in confidence except to the extent that a State committee may request the assistance of FSA employees during deliberations.

[70 FR 43266, July 27, 2005, as amended at 71 FR 30573, May 30, 2006]

### § 780.11 Appeals of NRCS determinations.

(a) Notwithstanding any other provision of this part, a determination of NRCS issued to a participant pursuant to Title XII of the Food Security Act of 1985, as amended, including a wetland determination, may be appealed to the county committee in accordance with the procedures in this part.

(b) If the county committee hears the appeal and believes that the challenge to the NRCS determination is not frivolous, the county committee shall refer the case with its findings on other issues to the NRCS State Conservationist to review the determination, or may make such a referral in advance of resolving other issues.

(c) A decision of the county committee not to refer the case with its findings to the NRCS State Conservationist may be appealed to the State Committee.

(d) The county or State committee decision must incorporate, and be based upon, the results of the NRCS State Conservationist's review and subsequent determination.

### § 780.12 Appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978.

(a) Requests for appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978 must be addressed to: Administrator, Farm Service Agency, Stop 0572, 1400 Independence Avenue, SW., Washington, DC 20250–0572.

(b) Decisions in appeals under this section are not subject to reconsideration and are administratively final.

### § 780.13 Verbatim transcripts.

(a) Appellants and their representatives are precluded from making any electronic recording of any portion of a hearing or other proceeding conducted in accordance with this part. Appellants interested in obtaining an official recording of a hearing or other proceeding may request a verbatim transcript in accordance with paragraph (b) of this section.

(b) Any party to an appeal or request for reconsideration under this part may request that a verbatim transcript be made of the hearing proceedings and

that such transcript be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, provide a copy of the transcript to FSA free of charge, and allow any other party in the proceeding desiring to purchase a copy of the transcript to order it from the transcription service.

### § 780.14 [Reserved]

### § 780.15 Time limitations.

(a) To the extent practicable, no later than 10 business days after an agency decision maker renders an adverse decision that affects a participant, FSA will provide the participant written notice of the adverse decision and available appeal rights.

(b) A participant requesting an appealability review by the State Executive Director of an agency decision made at the county, area, district or State level that is otherwise determined by FSA not to be appealable must submit a written request for an appealability review to the State Executive Director that is received no later than 30 calendar days from the date a participant receives written notice of the decision.

(c) A participant requesting reconsideration, mediation or appeal must submit a written request as instructed in the notice of decision that is received no later than 30 calendar days from the date a participant receives written notice of the decision. A participant that receives a determination made under part 1400 of this title will be deemed to have consented to an extension of the time limitation for a final determination as provided in part 1400 of this title if the participant requests mediation.

(d) Notwithstanding the time limits in paragraphs (b) and (c) of this section, a request for an appealability review, reconsideration, or appeal may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to seek an exception under this paragraph. FSA's refusal to accept an untimely request is not appealable.

(e) Decisions appealable under this part are final unless review options available under this part or part 11 are timely exercised.

(1) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the pertinent FSA office is not open for the transaction of business during normal working hours, the time for submission of a request will be extended to the close of business on the next working day.

(2) The date when an adverse decision or other notice pursuant to these rules is deemed received is the earlier of physical delivery by hand, by facsimile with electronic confirmation of receipt, actual stamped record of receipt on a transmitted document, or 7 calendar days following deposit for delivery by regular mail.

[70 FR 43266, July 27, 2005, as amended at 71 FR 30574, May 30, 2006]

### § 780.16 Implementation of final agency decisions.

To the extent practicable, no later than 30 calendar days after an agency decision becomes a final administrative decision of USDA, FSA will implement the decision.

### § 780.17 Judicial review.

(a) Decisions of the Administrator in appeals under this part from Agriculture Foreign Investment Disclosure Act penalties are administratively final decisions of USDA.

(b) The decision of a State Executive Director or State Conservationist on equitable relief made under § 718.307 of this title is administratively final and also not subject to judicial review.

## PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.
781.1 General.
781.2 Definitions.
781.3 Reporting requirements.
781.4 Assessment of penalties.
781.5 Penalty review procedure.
781.6 Paperwork Reduction Act assigned number.

AUTHORITY: Sec. 1–10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.*).

SOURCE: 49 FR 35074, Sept. 6, 1984, unless otherwise noted.

### § 781.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Agricultural Stablization and Conservation Service (FSA) pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities.

### § 781.2 Definitions.

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 or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural land.* Agricultural land means land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed $1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711–0783, 0851, and 0912–0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.

(c) *Any interest.* Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Leaseholds of less than 10 years;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate;

(5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and

(6) An interest solely in mineral rights.

(d) *County.* County means a political subdivision of a State identified as a County or parish. In Alaska, the term means an area so designated by the State Agricultural Stabilization and Conservation committee.

(e) *Foreign government.* Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(f) *Foreign individual.* Foreign individual means foreign person as defined in paragraph (g)(1) of this section.

(g) *Foreign person.* Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its

principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (g)(1) of this section; or

(B) By any person referred to in paragraph (g)(2) of this section; or

(C) By any foreign government referred to in paragraph (g)(3) of this section; or

(D) By any numerical combination of such individuals, persons, or governments, which combination need not have a common objective.

(h) *Person.* Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* Secretary means the Secretary of Agriculture.

(j) *Security interest.* Security interest means a mortgage or other debt securing instrument.

(k) *Significant interest of substantial control.* Significant interest or substantial control means:

(1) An interest of 10 percent or more held by a person referred to in paragraph (g)(4) of this section, by a single individual referred to in paragraph (g)(1) of this section, by a single person referred to in paragraph (g)(2) of this section, by a single government referred to in paragraph (g)(3) of this section; or

(2) An interest of 10 percent or more held by persons referred to in paragraph (g)(4) of this section, by individuals referred to in paragraph (g)(1) of this section, by persons referred to in paragraph (g)(2) of this section, or by governments referred to in paragraph (g)(3) of this section, whenever such persons, individuals, or governments are acting in concert with respect to such interest even though no single individual, person, or government holds an interest of 10 percent or more; or

(3) An interest of 50 percent or more, in the aggregate, held by persons referred to in paragraph (g)(4) of this section, by individuals referred to in paragraph (g)(1) of this section, by persons referred to in paragraph (g)(2) of this section, or by governments referred to in paragraph (g)(3) of this section, even though such individuals, persons, or governments may not be acting in concert.

(l) *State.* State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

[49 FR 35074, Sept. 6, 1984, as amended at 58 FR 48274, Sept. 15, 1993]

### § 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the FSA County office in the county where the land with respect to which such report must be filed is located or where the FSA County office administering programs carried out on such land is located; Provided, that the FSA office in Washington, DC, may grant permission to foreign persons to file reports directly with its Washington office when complex filings are involved, such as where the land being reported is located in more than one county.

(b) Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form FSA–153 by the following dates:

(1) August 1, 1979, if the interest in the agricultural land was held on the day before February 2, 1979, or

(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.

(c) Any person who holds or acquires any interest in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under this regulation, except under paragraph (g) of this section, shall file an FSA–153 report containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; the current estimated value of the land reported;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) In any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) In any case in which such transferee is not an individual, or a government, the nature of the person holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the FSA–153 form for the foreign person;

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement; and

(11) The date the interest in the land was acquired or transferred.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this section, must submit, in addition to the report required under paragraph (e) of this section, a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (f)(1) of this section, if such individual or government holds any interest in such foreign person:

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or a government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose

legal name is contained on any report submitted in satisfaction of paragraph (f) of this section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which each holder is created or organized, and the principal place of business of such holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to nonforeign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section disclosing information relating to nonforeign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(h)(1) Any person which has issued fewer than 100,000 shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to §781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that persons with foreign mailing addresses hold significant interest or substantial control in such person.

(2) Any person which has issued 100,000 or more shares of common and preferred stock and instruments convertible into equivalents thereof shall be considerd to have satisfactorily determined that it has no obligation to file a report pursuant to §781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that the percentage of shares held in such person both by persons with foreign mailing addresses and investment institutions which manage shares does not equal or exceed significant interest or substantial control in such person.

(3) If the person in paragraph (h)(2) of this section determines that the percentage of shares, which is held in it both by persons with foreign mailing addresses and investment institutions which manage shares, equals or exceeds significant interest or substantial control in such persons, then such person shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report pursuant to §781.3 if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the persons for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses from each such investment institution plus the percentage of shares held by persons listed on the business records with foreign mailing addresses does not reveal that foreign persons hold significant interest or substantial control in such person.

(i) Any foreign person, who submitted a report under paragraph (b), (c), or (d) of this section at a time when such land was agricultural, and such agricultural land later ceases to be agricultural, must submit, not later than 90 days after the date on which such land ceases being agricultural, a revised report from FSA–153 or a written notification of the change of status of the land to the FSA office where the report form was originally filed. The report form and notification must contain the following information:

(1) The legal name and the address of such foreign person;

(2) The legal description, which includes the State and county where the land is located, and the acreage of such land;

(3) The date the land ceases to be agricultural;

(4) The use of the land while agricultural.

(j) If any foreign person who submitted a report under paragraph (b), (c), or (d) of this section ceases to be a foreign person, such person must submit, not later than 90 days after the date such person ceases being a foreign person, a written notification of the change of status of the person to the FSA office where the report form FSA–153 was originally filed. The notification must contain the following information:

(1) The legal name of such person;

(2) The legal description and acreage of such land;

(3) The date such person ceases to be foreign.

(k) Any foreign person who submitted a report under paragraph (b), (c), or (d) of this section must submit, not later than 90 days after the change of information contained on the report, a written notification of the change to the FSA office where the report form FSA–153 was originally filed. The following information must be kept current on the report:

(1) The legal address of such foreign person;

(2) The legal name and the address required to be submitted under (f)(1) of this section;

(3) The legal name and the address required to be submitted under (g)(1) of this section.

[49 FR 35074, Sept. 6, 1984, as amended at 51 FR 25993, July 18, 1986]

### § 781.4 Assessment of penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 781.3;

(2) Failure to maintain any submitted report with accurate information; or

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of a letter returning for completion such incomplete report, all the information required to be in such report; or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) Late-filed reports: One-tenth of one percent of the fair market value, as determined by the Farm Service Agency, of the foreign person's interest in the agricultural land, with respect to which such violation occurred, for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the foreign person's interest in such land.

(2) Submission of an incomplete report or a report containing misleading or false information, failure to submit a report or failure to maintain a submitted report with accurate information: 25 percent of the fair market value, as determined by the Farm Service Agency, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(3) Penalties prescribed above are subject to downward adjustments based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the County Agricultural Stabilization and Conservation Committee for the County where the land is located, will be considered to be the fair market value.

### §781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of §781.4, a written notice of apparent liability will be sent to the foreign person's last known address by the Farm Service Agency. This notice will set forth the facts which indicate apparent liability, identify the type of violation listed in paragraph (a) of §781.4 which is involved, state the amount of the penalty to be imposed, include a statement of fair market value of the foreign person's interest in the subject land, and summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If a foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph.

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report, if required, in compliance with §781.3. The amount shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Farm Service Agency, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(3) A request for a hearing on the proposed penalty may be filed in accordance with part 780 of this title.

(c) After a final decision is issued pursuant to an appeal under part 780 of this title, the Administrator or Administrator's designee shall mail the foreign person a notice of the determination on appeal, stating whether a report must be filed or amended in compliance with §781.3, the amount of the penalty (if any), and the date by which it must be paid. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. The Department is not responsible for the loss of currency sent through the mails.

(d) If the foreign person contests the notice of apparent liability by submitting a written statement or a request for a hearing thereon, the foreign person may elect either to pay the penalty or decline to pay the penalty pending resolution of the matter by the Administrator. If the Administrator determines that the foreign person is not liable for the penalty or is liable for less than the amount paid, the payment will be wholly or proportionally refunded. If the Administrator ultimately determines that the foreign person is liable, the penalty finally imposed shall not exceed the amount imposed in the notice of apparent liability.

(e) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(f) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR part 13.

[49 FR 35074, Sept. 6, 1984, as amended at 60 FR 67318, Dec. 29, 1995]

### §781.6 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 781) 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 0560–0097.

# PART 782—END-USE CERTIFICATE PROGRAM

## Subpart A—General

Sec.
782.1 Basis and purpose.
782.2 Definitions.
782.3 Administration.
782.4 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

## Subpart B—Implementation of the End-Use Certificate Program

782.10 Identification of commodities subject to end-use certificate regulations.
782.11 Extent to which commodities are subject to end-use certificate regulations.
782.12 Filing FSA–750, End-Use Certificate for Wheat.
782.13 Importer responsibilities.
782.14 Identity preservation.
782.15 Filing FSA–751, Wheat Consumption and Resale Report.
782.16 Designating end use on form FSA–751.
782.17 Wheat purchased for resale.
782.18 Wheat purchased for export.
782.19 Penalty for noncompliance.

## Subpart C—Records and Reports

782.20 Importer records and reports.
782.21 End-user and exporter records and reports.
782.22 Subsequent buyer records and reports.
782.23 Failure to file end-use certificates or consumption and resale reports.
782.24 Recordkeeping and examination of records.
782.25 Length of time records are to be kept.

AUTHORITY: 19 U.S.C. 3391(f).

SOURCE: 60 FR 5089, Jan. 26, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 782 appear at 61 FR 32643, June 25, 1996.

## Subpart A—General

### § 782.1 Basis and purpose.

The regulations contained in this part are issued pursuant to and in accordance with Section 321(f) of the North American Free Trade Agreement Implementation Act. These regulations govern the establishment of the end-use certificate program, the completion of end-use certificates, the identification of commodities requiring end-use certificates, the submission of reports, and the keeping of records and making of reports incident thereto.

### § 782.2 Definitions.

As used in this part and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter requires otherwise. References contained herein to other parts of this chapter or title shall be construed as references to such parts and amendments now in effect or later issued.

*Date of entry* means the effective time of entry of the merchandise, as defined in 19 CFR part 101.

*End Use* means the actual manner in which Canadian-produced wheat was used, including, among other uses, milling, brewing, malting, distilling, manufacturing, or export.

*End user* means the entity that uses Canadian-produced wheat for, among other uses, milling, brewing, malting, distilling, manufacturing, or other use, except resale.

*Entity* means a legal entity including, but not limited to, an individual, joint stock company, corporation, association, partnership, cooperative, trust, and estate.

*Entry* means that documentation required by 19 CFR part 142 to be filed with the appropriate U.S. Customs officer to secure the release of imported merchandise from U.S. Customs custody, or the act of filing that documentation.

*Grain handler* means an entity other than the importer, exporter, subsequent buyer, or end user that handles wheat on behalf of an importer, exporter, subsequent buyer, or end user.

*Importer* means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

*Metric ton* means a unit of measure that equals 2,204.6 pounds.

*Subsequent buyer* means an entity other than the end user or importer which owns wheat originating in Canada.

*Workdays* means days that the Federal government normally conducts

business, which excludes Saturdays, Sundays, and Federal holidays.

[60 FR 5089, Jan. 26, 1995, as amended at 61 FR 32643, June 25, 1996; 64 FR 12885, Mar. 16, 1999]

### § 782.3 Administration.

The end-use certificate program will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), through the Office of the Deputy Administrator for Commodity Operations (DACO), FSA, Washington, D.C., and the Kansas City Commodity Office (KCCO), FSA, Kansas City, MO, in coordination with the Commissioner of Customs pursuant to a Memorandum of Understanding.

### § 782.4 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0560–0151.

[61 FR 32643, June 25, 1996]

## Subpart B—Implementation of the End-Use Certificate Program

### § 782.10 Identification of commodities subject to end-use certificate regulations.

(a) The regulations in this part are applicable to wheat and barley, respectively, imported into the U.S. from any foreign country, as defined in 19 CFR 134.1, or instrumentality of such foreign country that, as of April 8, 1994, required end-use certificates for imports of U.S.-produced wheat or barley.

(b) Because Canada is the only country with such requirements on wheat, and no country has an end-use certificate requirement for barley, only wheat originating in Canada is affected by the regulations in this part.

### § 782.11 Extent to which commodities are subject to end-use certificate regulations.

(a) In the event that Canada eliminates the requirement for end-use certificates on imports from the U.S., the provisions of the regulations in this part shall be suspended 30 calendar days following the date Canada eliminates its end-use certificate requirement, as determined by the Secretary.

(b) The provisions of the regulations in this part may be suspended if the Secretary, after consulting with domestic producers, determines that the program has directly resulted in the:

(1) Reduction of income to U.S. producers of agricultural commodities, or

(2) Reduction of the competitiveness of U.S. agricultural commodities in world export markets.

### § 782.12 Filing FSA–750, End-Use Certificate for Wheat.

(a) Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA–750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, and submit the completed original form FSA–750 to KCCO within 10 workdays following the date of entry or release. Each form FSA–750 shall set forth, among other things, the:

(1) Name, address, and telephone number of the importer,

(2) Customs entry number,

(3) Date of entry,

(4) Importer number,

(5) Class of wheat being imported,

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) If imported as a result of a contract for sale, the date of such contract.

(8) Quantity imported, in net metric tons, rounded to the nearest hundredth of a metric ton, per conveyance,

(9) Storage location of the wheat,

(10) Mode of transportation and the name of the transportation company used to import the wheat, and

(11) A certification that the identity of the Canadian-produced wheat will be preserved until such time as the wheat is either delivered to a subsequent buyer or end-user, or loaded onto a conveyance for direct delivery to an end user.

(b) Importers may provide computer generated form FSA–750, provided such computer generated forms:

(1) Are approved in advance by KCCO,

(2) Contain a KCCO-assigned serial number, and

(3) Contain all of the information required in paragraphs (a)(1) through (a)(9).

(c) KCCO will accept form FSA–750 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer remains responsible for ensuring that electronically transmitted forms are received in accordance with paragraph (a).

(d) The original form FSA–750 and one copy of form FSA–750 shall be signed and dated by the importer.

(e) Distribution of form FSA–750 will be as follows:

(1) If form FSA–750 is submitted to KCCO in accordance with paragraph (c)(1);

(i) The original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, by the importer,

(ii) One copy shall be retained by the importer.

(2) If form FSA–750 is submitted to KCCO in accordance with paragraphs (c)(2) or (c)(3), the original form FSA–750 that is signed and dated by the importer in accordance with paragraph (d) shall be maintained by the importer,

(3) The importer shall provide a photocopy to the end user or, if the wheat is purchased for purposes of resale, the subsequent buyer(s).

(f) The completion and filing of an end-use certificate does not relieve the importer of other legal requirements, such as those imposed by other U.S. agencies, pertaining to the importation.

[60 FR 5089, Jan. 26, 1995, as amended at 61 FR 32643, June 25, 1996; 64 FR 12885, Mar. 16, 1999]

### § 782.13 Importer responsibilities.

The importer shall:

(a) File form FSA–750 in accordance with § 782.12.

(b) Immediately notify each subsequent buyer, grain handler, or end user that the wheat being purchased or handled originated in Canada and may only be commingled with U.S.-produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end user or a foreign country.

(c) Provide each subsequent buyer or end user with a copy of form FSA–750 that was filed when the Canadian wheat entered the U.S.

(d) Submit to KCCO, within 15 workdays following the date of sale, form FSA–751, Wheat Consumption and Resale Report, in accordance with § 782.15.

[60 FR 5089, Jan. 26, 1995, as amended at 61 FR 32643, June 25, 1996]

### § 782.14 Identity preservation.

(a) The importer and all subsequent buyers of the imported wheat shall preserve the identity of the Canadian-produced wheat.

(b) Canadian-produced wheat may only be commingled with U.S.-produced wheat by the end user, or when loaded onto a conveyance for direct delivery to the end user or foreign country.

(c) Failure to meet the requirements in paragraphs (a) and (b) of this section shall constitute noncompliance by the importer or subsequent buyer for the purposes of this part.

### § 782.15 Filing FSA–751, Wheat Consumption and Resale Report.

(a) For purposes of providing information relating to the consumption and resale of Canadian-produced wheat, form FSA–751, Wheat Consumption and Resale Report, shall be filed with KCCO by each:

(1) Importer and subsequent buyer, for each sale to a subsequent buyer or end user, within 15 workdays following the date of sale.

(2) End user and exporter, for full and partial consumption or export, within 15 workdays following:

(i) March 31,

(ii) June 30,

(iii) September 30, and

(iv) December 31.

(b) Each form FSA–751 shall set forth, among other things, the:

(1) Name, address, and telephone number of the filer,

(2) Storage location of the wheat,

(3) Name and address of the importer,

(4) Form FSA–750, End-Use Certificate for Wheat, serial number,

(5) Class of wheat,

(6) Date the wheat was received at the filer's facility,

(7) Quantity of wheat received, in net metric tons, rounded to the nearest hundredth of a metric ton,

(8) Certification to be completed by end users and exporters that requires the end user or exporter to provide, among other things:

(i) A certification of compliance with these regulations,

(ii) The quantity consumed or exported,

(iii) The quantity remaining,

(iv) The manner in which the commodity was used.

(v) The signature of an authorized representative of the end user or exporter.

(9) Certification to be completed by subsequent buyers and importers that requires the subsequent buyer or importer to provide, among other things:

(i) A certification of compliance with the regulations in this part,

(ii) The quantity resold,

(iii) The name, address, and telephone number of the buyer, and

(iv) The signature of an authorized representative of the subsequent buyer or importer.

(c) End user and exporter shall submit form FSA–751 to KCCO quarterly until the wheat has been fully utilized or exported in accordance with the regulations in this part.

(d) Importers and subsequent buyers shall, for each individual sale, submit form FSA–751 to KCCO until the imported wheat has been fully resold.

(e) Filers may provide computer generated form FSA–751, provided such computer generated forms:

(1) Are approved in advance by KCCO, and

(2) Contain the information required in paragraphs (b)(1) through (b)(9) of this section.

(f) KCCO will accept form FSA–751 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer, end user, exporter, or subsequent buyer remains responsible for ensuring that electronically transmitted forms are received in accordance with this section.

(g) Distribution of form FSA–751 will be as follows:

(1) If form FSA–751 is submitted to KCCO in accordance with paragraph (f)(1) of this section:

(i) The original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, by the importer, end user, exporter, or subsequent buyer.

(ii) One copy shall be retained by the importer, end user, exporter, or subsequent buyer.

(2) If form FSA–751 is submitted to KCCO in accordance with paragraphs (f)(2) or (f)(3) of this section, the original form FSA–751 shall be maintained by the importer, end user, exporter, or subsequent buyer.

[60 FR 5089, Jan. 26, 1995, as amended at 61 FR 32643, June 25, 1996]

### § 782.16 Designating end use on form FSA–751.

(a) If the end use specified on the applicable form FSA–751, Wheat Consumption and Resale Report, is ''export,'' the exporter must specify the final destination, by country, on form FSA–751.

(b) If the end user utilizes the wheat for purposes other than milling, brewing, malting, distilling, export, or manufacturing, such use must be specifically designated on form FSA–751.

### § 782.17 Wheat purchased for resale.

(a) This section applies to an importer or subsequent buyer who imports or purchases Canadian-produced wheat for the purpose of reselling the wheat.

(b) The importer or subsequent buyer shall immediately notify each subsequent buyer, grain handler, exporter, or end user that the wheat being purchased or handled originated in Canada

and may only be commingled with U.S.-produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end user or a foreign country.

(c) The importer or subsequent buyer shall provide all purchasers of Canadian-produced wheat with a photocopy of the form FSA–750 submitted to KCCO by the importer in accordance with § 782.12(a).

[60 FR 5089, Jan. 26, 1995, as amended at 61 FR 32643, June 25, 1996]

### § 782.18 Wheat purchased for export.

(a) This section applies to an importer or subsequent buyer who imports or purchases Canadian-produced wheat for the purpose of export to a foreign country or instrumentality.

(b) Wheat that is purchased for the purpose of export must be stored identity preserved while the importer or subsequent buyer maintains control of the wheat, except that such wheat may be commingled when loaded onto a conveyance for delivery to the foreign country or instrumentality.

(c) Importers or subsequent buyers that purchase wheat for export to a foreign country or instrumentality must complete form FSA–751 quarterly, in accordance with § 782.15.

### § 782.19 Penalty for noncompliance.

It shall be a violation of 18 U.S.C. 1001 for any entity to engage in fraud with respect to, or to knowingly violate, the provisions set forth in this part.

## Subpart C—Records and Reports

### § 782.20 Importer records and reports.

(a) The importer shall retain a copy of each form:

(1) FSA–750, End-Use Certificate for Wheat, that is submitted to KCCO in accordance with § 782.12(a); and

(2) FSA–751, Wheat Consumption and Resale Report, that is submitted to KCCO in accordance with § 782.15(a)(1).

(b) The importer shall maintain records to verify that the wheat was identity preserved until such time as the wheat was:

(1) Loaded onto the conveyance for direct delivery to an end user, or

(2) Delivered to an end user, or

(3) Delivered to a subsequent buyer.

(c) Copies of the documents, information, and records required in paragraphs (a) and (b) of this section shall be kept on file at the importer's headquarters office or other location designated by the importer for the period specified in § 782.25.

### § 782.21 End-user and exporter records and reports.

(a) The end user or exporter shall retain a copy of each form FSA–751, Wheat Consumption and Resale Report, that is filed with KCCO in accordance with § 782.15(a)(2).

(b) The end user or exporter shall retain a copy of each form FSA–750, End-Use Certificate for Wheat, provided to the end-user or exporter in accordance with § 782.17(b).

(c) The exporter shall maintain records to verify that wheat purchased for the purpose of export was stored identity preserved until such time as the wheat was loaded onto a conveyance for delivery to the foreign country or instrumentality.

(d) Copies of the documents required in paragraphs (a), (b), and (c) of this section shall be kept on file at the end-user's or exporter's headquarters office or other location designated by the end user or exporter for the period specified in § 782.25.

### § 782.22 Subsequent buyer records and reports.

(a) The subsequent buyer shall retain a copy of each form FSA–751, Wheat Consumption and Resale Report, that is filed with KCCO in accordance with § 782.15(a)(1).

(b) The subsequent buyer shall retain a copy of each form FSA–750, End-Use Certificate for Wheat, provided to the subsequent buyer in accordance with § 782.17(b).

(c) The subsequent buyer shall maintain records to verify that the wheat specified on the end-use certificate was identity preserved during the time that the subsequent buyer maintained control of the wheat, or until the wheat was loaded onto a conveyance for direct delivery to an end user.

(d) Copies of the documents and records required in paragraphs (a)

through (c) of this section shall be kept on file at the subsequent buyer's headquarters office or other location designated by the subsequent buyer for the period specified in § 782.25.

### § 782.23 Failure to file end-use certificates or consumption and resale reports.

Failure by importers, end users, exporters, and subsequent buyers to file form FSA–750, End-Use Certificate for Wheat, and form FSA–751, Wheat Consumption and Resale Report, as applicable, and retain or maintain related copies and records shall constitute noncompliance for the purposes of § 782.19.

### § 782.24 Recordkeeping and examination of records.

(a) *Examination.* For the purpose of verifying compliance with the requirements of this part, each importer, end-user, exporter, and subsequent buyer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the importation of the Canadian-produced wheat that is within the control of such entity.

(b) *Orderly retention of records.* To facilitate examination and verification of the records and reports required by this part, copies of form FSA–750, End-Use Certificate for Wheat, and form FSA–751, Wheat Consumption and Resale Report, shall be filed in an orderly manner, and must be made available for inspection by representatives of USDA.

### § 782.25 Length of time records are to be kept.

The records required to be kept under this part shall be retained for 3 years following the filing date of the applicable record. Records shall be kept for such longer period of time as may be requested in writing by USDA representatives.

## PART 783—TREE ASSISTANCE PROGRAM

Sec.
783.1 Applicability.
783.2 Administration.
783.3 Definitions.
783.4 Eligibility.
783.5 Application.
783.6 Benefits.
783.7 Obligations of a participant.
783.8 Multiple benefits.
783.9 Miscellaneous.

AUTHORITY: 7 U.S.C. 8201 *et seq.*

SOURCE: 69 FR 9745, Mar. 2, 2004, unless otherwise noted.

### § 783.1 Applicability.

This part governs and provides the requirements and authorities for administration of the Tree Assistance Program (TAP) of the Farm Service Agency. This program shall operate only to the extent funds are appropriated for this program. Payments will be limited to lost eligible trees, bushes or vines, and all claims are subject to the availability of funds.

### § 783.2 Administration.

(a) The program will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA), and the Deputy Administrator for Farm Programs, FSA. In the field, the regulations in this part will be administered by the FSA 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 Deputy 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 non-statutory requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in TAP is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

### § 783.3 Definitions.

(a) The definitions in part 718 of this chapter apply to TAP except when they conflict with paragraph (b) of this section.

(b) The following definitions apply to TAP:

*Cutting* means a vine, which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit or similar fruit as approved by the Deputy Administrator.

*County office* means the FSA or USDA Service Center that is responsible for servicing the farm on which the trees, bushes or vines are located.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or a designee.

*Eligible bush* means, a low, branching, woody plant from which an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush.

*Eligible orchardist* means an individual, or legal entity, including an Indian tribe as defined under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization as defined under the Indian Self-Determination Education and Assistance Act; or, an economic enterprise as defined under the Indian Financing Act of 1974, which owns a tree, bush or vine as defined in this part.

*Eligible tree* means, a tall, woody plant having comparatively great height, as determined by the Deputy Administrator, and a single trunk from which an annual crop is produced for commercial purposes, such as maple tree for syrup, papaya tree, or orchard tree. Plantain and banana plants are also included. Trees used for pulp or timber are not considered eligible trees under this part.

*Eligible vine* means a plant with a flexible stem supported by climbing, twining, or creeping along a surface and from which an annual fruit or vegetable crop is produced for commercial purposes, such as grape, kiwi fruit, or passion fruit.

*Individual stand* means an area of trees, bushes or vines that are tended by an owner as a single operation, whether or not such trees, bushes or vines are planted in the same field or similar location. Trees, bushes or vines in the same field or similar area may be considered separate individual stands if the county committee determines that the trees, bushes or vines are susceptible to losses at significantly differing levels.

*Lost* means with respect to the extent of damage to a tree or other plant that the damage is such that it would, as determined by FSA, be more economically beneficial to replace the plant rather than to leave it in its deteriorated, low producing state.

*Natural disaster* means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by FSA.

*Normal mortality* means the percentage, as established by the State Committee, of lost trees, bushes or vines in the individual stand that normally occurs in a 12-month period.

*Program year* means a calendar year for which funding is available.

*Seedling* means a tree, bush or vine which was planted in the ground for commercial purposes.

### § 783.4 Eligibility.

(a) To be considered an eligible loss:

(1) Eligible trees, bushes or vines must have been located and lost as a result of natural disasters determined

and announced by FSA as set forth in the TAP application.

(2) The individual stand must have sustained a loss in excess of 15 percent after adjustment for normal mortality;

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The tree, bush or vine, in the absence of a qualifying disaster, would not normally have been rehabilitated or replanted within the 12-month period following the loss.

(b)(1) The damage must be visible and obvious to the county committee except that if the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(2) The county committee may require information from an expert in the case of plant disease or insect infestation.

(c)(1) To be eligible for TAP benefits the eligible orchardist must:

(i) Own the stand on which the claim for benefits is based;

(ii) Have owned the stand at the time the natural disaster occurred;

(iii) Have continuously owned the stand until the TAP application is submitted; and

(iv) Not exceed or be in violation of any other limitations on payments.

(2) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

(d)(1) A new owner of an orchard is allowed to receive TAP benefits in an amount not to exceed those approved for the predecessor owner of the orchard and not paid to the predecessor owner, if the predecessor owner of the orchard agrees to the succession in writing and if the new owner:

(i) Acquires ownership of trees, bushes or vines for which benefits have been approved;

(ii) Agrees to complete all approved practices which the original owner has not completed; and

(iii) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(2) In the case of death, incompetence or disappearance of an eligible orchardist, successors may be eligible to receive TAP payments as specified in part 707 of this chapter.

### § 783.5 Application.

(a) A complete application for TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline FSA announces.

(b) A complete application includes all of the following:

(1) A form provided by FSA;

(2) A written estimate of the number of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee;

(3) The number of acres on which the loss was suffered; and

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) Before requests will be approved, the county committee:

(1) Must make recommendations and an eligibility determination based on a complete application on those requests that it wants to refer to a higher approval official.

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(3) May request additional information and may consider all relevant information in making its determination, including its members own knowledge about the applicant's normal operations.

### § 783.6 Benefits.

(a) Subject to the availability of TAP funds, an approved eligible orchardist shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying loss (that loss over and above the calculated 15% mortality). The payment shall be the lesser of the 75% of actual costs for the replanting or the amount calculated using rates established by the State committee (not to exceed the maximum amount the Deputy Administrator establishes). The costs permitted shall only be approved for:

(1) Seedlings or cuttings, for tree, bush or vine replanting;

(2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients necessary for successful establishment;

(4) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(5) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and other costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines and approves. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the species of plantings, seedlings or cuttings differs significantly from the species lost then, except as the county committee determines, the costs may not be reimbursed.

(d) Eligible orchardists may elect not to replant the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted.

(e) The cumulative total quantity of acres planted to trees, bushes or vines for which a person may receive assistance at any time under this part shall not exceed 500 acres.

(f) The cumulative amount of TAP benefits which any person, as defined in accordance with part 1400 of this title, may receive under this part shall not exceed $75,000.

(g) In the event the total amount of claims submitted under this part during a sign-up period exceeds the applicable funds available for such period, such payments shall be reduced by a uniform national percentage or by such other method deemed appropriate by the Deputy Administrator. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

### § 783.7 Obligations of a participant.

(a) Eligible orchardists must execute all required documents and complete the TAP funded practice within 12 months of application approval.

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a TAP benefit, the person and successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this title.

(c) Participants must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

### § 783.8 Multiple benefits.

Persons may not receive or retain payments for production losses from trees, vines and bushes under this part if they have been compensated under another program for the same loss. However, this restriction does not apply to emergency Federal loans or payments resulting from purchase of the additional coverage insurance, as defined in 7 CFR 400.651. However, in no case shall the total amount received from all sources exceed the amount of the owner's actual loss, unless the Deputy Administrator shall approve an exemption in writing.

### § 783.9 Miscellaneous.

(a) 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.

(b) Persons shall be ineligible to receive or retain assistance under this program if they have:

(1) Adopted any scheme or device intended to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) TAP benefits paid to a person as a result of misrepresentation shall be refunded to FSA with interest and costs of collection. The party engaged in acts prohibited by this part and the party receiving payment and their successors shall be jointly and severally liable for any amount due. The remedies provided to FSA in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(d) 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.

(e) A minor who is an owner that has met all other eligibility criteria shall be eligible for TAP assistance if:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute; or

(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.

(f) The regulations regarding reconsideration's and appeals at part 11 of this title and part 780 of this chapter apply to this part.

# PART 784—2004 EWE LAMB REPLACEMENT AND RETENTION PAYMENT PROGRAM

Sec.

784.1 Applicability.
784.2 Administration.
784.3 Definitions.
784.4 Time and method of application.
784.5 Payment eligibility.
784.6 Rate of payment and limitations on funding.
784.7 Availability of funds.
784.8 Appeals.
784.9 Misrepresentation and scheme or device.
784.10 Estates, trusts, and minors.
784.11 Death, incompetence, or disappearance.
784.12 Maintaining records.
784.13 Refunds; joint and several liability.
784.14 Offsets and withholdings.
784.15 Assignments.
784.16 Termination of program.

AUTHORITY: Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

SOURCE: 69 FR 76837, Dec. 23, 2004, unless otherwise noted.

## §784.1 Applicability.

(a) Subject to the availability of funds, this part establishes terms and conditions under which the 2004 Ewe Lamb Replacement and Retention Payment Program will be administered.

(b) Unless otherwise determined by the Farm Service Agency (FSA) in accordance with the provisions of this part, the amount that may be expended under this part for program payments shall not exceed $18 million. Claims that exceed that amount will be prorated in accordance with §784.7.

(c) To be eligible for payments, producers must comply with all provisions of this part and with any other conditions imposed by FSA.

## §784.2 Administration.

(a) This part shall be administered by FSA under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees) in accordance with their assigned duties and the regulations of this part.

(b) The Deputy Administrator for Farm Programs, FSA, or a designee, may reverse or modify a determination made by a State or county committee.

(c) The Deputy Administrator for Farm Programs, FSA, may waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(d) The program described under this part is a one-time program to be administered with respect to eligibility and qualifying factors occurring during or related to the base period of August 1, 2003 through July 31, 2004, as specified in this part.

## §784.3 Definitions.

The definitions in this section shall apply to the 2004 Ewe Lamb Replacement and Retention Payment Program and this part.

*Agricultural Marketing Service or AMS* means the Agricultural Marketing Service of the Department.

*Application* means the Ewe Lamb Replacement and Retention Payment Program Application.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits. Unless otherwise announced, that period will end January 13, 2005.

*Base period* means the period from August 1, 2003, through July 31, 2004, during and after which ewe lambs must meet all qualifying eligibility criteria.

*Ewe lamb* means a female lamb no more than 18 months of age that has not produced an offspring.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Foot rot* means an infectious, contagious disease of sheep that causes severe lameness and economic loss from decreased flock production.

*Lambing cycle* means the period of time from birth to weaning.

*Parrot mouth* means a genetic defect resulting in the failure of the incisor teeth to meet the dental pad correctly.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

*Sheep and lamb operation* means any self-contained, separate enterprise operated as an independent unit exclusively within the United States in which a person or group of persons raise sheep and/or lambs.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

### § 784.4 Time and method of application.

(a) A request for benefits under this part must be submitted on the Ewe Lamb Replacement and Retention Program Application. The application form may be obtained in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the form at *http://www.usda.gov/dafp/psd/*.

(b) The form may be obtained from and must be submitted to the FSA county office serving the county where the sheep and lamb operation is located. The completed form must be received by the FSA county office by the date established by FSA. Applications not received by that date will be disapproved and returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(c) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Providing a false certification will lead to ineligibility for payments and may be subject to additional civil and criminal sanctions.

(d) The sheep and lamb operation requesting benefits under this part must maintain accurate records that document that they meet all eligibility requirements specified herein, as may be requested by FSA. Acceptable forms of supporting documentation include, but are not limited to: Sales receipts, farm management records, veterinarian certifications, scrapie program forms and identification numbers, as well as, other types of documents that prove the eligibility of the qualifying ewe lambs and the sheep and lamb operation. The supporting documentation provided must, at a minimum, include: date of lamb purchase or date of birth, date of lamb death (if applicable), lamb identification and control information, number of ewe lambs purchased or retained, and scrapie program identification numbers.

### § 784.5 Payment eligibility.

(a) Payments can be made, as agreed to by FSA and subject to the availability of funds, for eligible ewe lambs

considered by FSA, as determined by FSA only, to have been acquired or held during the base period by eligible sheep and lamb operations for breeding purposes. Payments may be made for eligible ewe lambs held continuously by the operation, through the end of the compliance period, from the time of the first possession of the ewe lamb in the base period. The payment rate cannot exceed the rate provided for in §784.6 and may be prorated pursuant to §784.7. For purposes of this section, the ''base period'' is the period from August 1, 2003, through July 31, 2004. A purchase in the base period without possession in the base period will not be considered an acquisition in the base period for purposes of this section unless otherwise allowed by FSA.

(b) For the ewe lamb to be eligible, a sheep and lamb operation must certify that the ewe lamb:

(1) During at least part of the base period was a ewe lamb which was both, at the same time, not older than 18 months of age and had not produced an offspring; and

(2) At the time of certification, does not possess any of the following characteristics:

(i) Parrot mouth; or

(ii) Foot rot.

(c) The sheep and lamb operation must certify and agree to:

(1) Maintain the qualifying ewe lambs in the herd for at least one complete, normal offspring lambing cycle, the end of which shall constitute the end of the compliance period for the purposes of paragraph (a) of this section, and actually maintain the lambs for that period in accord with that certification. The ''offspring'' lambing cycle refers to the time in which the qualifying ewe lamb's own offspring would be weaned, in a normal course, from that qualifying ewe if the ewe were to have offspring, irrespective of whether the ewe actually produces offspring.

(2) Upon request by an AMS agent or FSA representative, allow the AMS agent or FSA Representative to verify that the ewe lambs meet qualifying characteristics. Spot checks will be conducted by FSA within 30 days of the end of the sign-up period. Any animal showing evidence of parrot mouth, foot rot, or scrapie in such spot checks will be considered to have had those conditions at the time of certification. Other spot checks may be conducted as needed.

(3) Maintain documentation of any death loss of qualifying ewe lambs.

(4) Agree to refund any payments made with respect to any ewe lamb or offspring that has died before completing the full program requirements where said deaths for the operation exceed 10 percent.

(5) Be in compliance with all requirements relating to scrapie, as described in 9 CFR parts 54 and 79.

(d) To be eligible for any payments addressed under this section, a sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

(e) In addition, to be eligible for payment, a sheep and lamb operation must submit a timely application during the application period for benefits and comply with all other terms and conditions of this part or that are contained in the application for such benefits, and such other conditions as may be imposed by FSA.

(f) Proof that each lamb was held during and through the end of the base period as required by paragraph (a) of this section, as must be determined individually for each lamb, shall be provided in such manner, and with such access to the operation and the documents and information related to the operation, as FSA may request.

### §784.6 Rate of payment and limitations on funding.

(a) Subject to the availability of funds and to the proration provisions of §784.7, payments for qualifying operations shall be $18 for each qualifying ewe lamb retained or purchased for breeding purposes.

### §784.7 Availability of funds.

Total payments under this part, unless otherwise determined by the FSA, cannot exceed $18 million. In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall prorate the available funds by a national factor to reduce the expected

payments to be made to the amount available. The payment shall be made based on the national factored rate as determined by FSA. FSA shall prorate the payments in such manner as it, in its sole discretion, finds appropriate and reasonable.

### § 784.8 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this part.

### § 784.9 Misrepresentation and scheme or device.

(a) A sheep and lamb operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

### § 784.10 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 for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

### § 784.11 Death, incompetence, or disappearance.

In the case of death, incompetence, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

### § 784.12 Maintaining records.

Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

### § 784.13 Refunds; joint and several liability.

(a) In the event there is an inaccurate certification or a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all related payments made under this part to any sheep and lamb operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing a sheep and lamb operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be charged on refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.

(f) Any excess payments made by FSA with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

### §784.14 Offsets and withholdings.

FSA may offset or withhold any amounts due FSA under this subpart in accordance with the provisions of 7 CFR part 792, or successor regulations, as designated by the Department.

### §784.15 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404, or successor regulations, as designated by the Department.

### §784.16 Termination of program.

This program will be terminated after payment has been made to those applications certified as eligible pursuant to the application period established in §784.4.

## PART 785—CERTIFIED STATE MEDIATION PROGRAM

Sec.

785.1 General.
785.2 Definitions.
785.3 Annual certification of State mediation programs.
785.4 Grants to certified State mediation programs.
785.5 Fees for mediation services.
785.6 Deadlines and address.
785.7 Distribution of Federal grant funds.
785.8 Reports by qualifying States receiving mediation grant funds.
785.9 Access to program records.
785.10 Penalties for non-compliance.
785.11 Reconsideration by the Administrator.
785.12 Nondiscrimination.
785.13 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101–5104.

SOURCE: 67 FR 57315, Sept. 10, 2002, unless otherwise noted.

### §785.1 General.

(a) States meeting conditions specified in this part may have their mediation programs certified by the Farm Service Agency (FSA) and receive Federal grant funds for the operation and administration of agricultural mediation programs.

(b) USDA agencies participate in mediations pursuant to agency rules governing their informal appeals processes. Where mediation of an agency decision by a certified State mediation program is available to participants in an agency program as part of the agency's informal appeal process, the agency will offer a participant receiving notice of an agency decision the opportunity to mediate the decision under the State's certified mediation program, in accordance with the agency's informal appeals regulations.

(c) USDA agencies making mediation available as part of the agency informal appeals process may execute memoranda of understanding with a certified mediation program concerning procedures and policies for mediations during agency informal appeals that are not inconsistent with this part or other applicable regulations. Each such memorandum of understanding will be deemed part of the

grant agreement governing the operation and administration of a State certified mediation program receiving Federal grant funds under this part.

(d) A mediator in a program certified under this part has no authority to make decisions that are binding on parties to a dispute.

(e) No person may be compelled to participate in mediation provided through a mediation program certified under this part. This provision shall not affect a State law requiring mediation before foreclosure on agricultural land or property.

### § 785.2 Definitions.

*Administrator* means the Administrator, FSA, or authorized designee.

*Certified State mediation program* means a program providing mediation services that has been certified in accordance with section 785.3.

*Confidential mediation* means a mediation process in which the mediator will not disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or section 785.9.

*Covered persons* means producers, their creditors (as applicable), and other persons directly affected by actions of the USDA involving one or more of the following issues:

(1) Wetlands determinations;

(2) Compliance with farm programs, including conservation programs;

(3) Agricultural loans (regardless of whether the loans are made or guaranteed by the USDA or are made by a third party);

(4) Rural water loan programs;

(5) Grazing on National Forest System lands;

(6) Pesticides; or

(7) Such other issues as the Secretary may consider appropriate.

*Fiscal year* means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

*FSA* means the Farm Service Agency of the U.S. Department of Agriculture, or a successor agency.

*Mediation services* means all activities relating to the intake and scheduling of mediations; the provision of background and selected information regarding the mediation process; financial advisory and counseling services (as reasonable and necessary to prepare parties for mediation) performed by a person other than a State mediation program mediator; and mediation sessions in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but has no authoritative decision making power.

*Mediator* means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

*Qualified mediator* means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by the USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of professionals in dispute resolution.

*Qualifying State* means a State with a State mediation program currently certified by FSA.

### § 785.3 Annual certification of State mediation programs.

To obtain FSA certification of the State's mediation program, the State must meet the requirements of this section.

(a) *New request for certification*. A new request for certification of a State mediation program must include descriptive and supporting information regarding the mediation program and a certification that the mediation program meets certain requirements as prescribed in this subsection. If a State is also qualifying its mediation program to request a grant of Federal

funds under the certified State mediation program, the State must submit with its request for certification additional information in accordance with §785.4.

(1) *Description of mediation program.* The State must submit a narrative describing the following with supporting documentation:

(i) A summary of the program;

(ii) An identification of issues available for mediation under the program;

(iii) Management of the program;

(iv) Mediation services offered by the program;

(v) Program staffing and staffing levels;

(vi) Uses of contract mediation services in the program describing both services provided by contractors and costs of such services;

(vii) State statutes and regulations in effect that are applicable to the State's mediation program; and

(viii) A description of the State program's education and training requirements for mediators including:

(A) Training in mediation skills and in USDA programs;

(B) Identification and compliance with any State law requirements; and

(C) Other steps by the State's program to recruit and deploy qualified mediators.

(ix) Any other information requested by FSA;

(2) *Certification.* The Governor, or head of a State agency designated by the Governor, must certify in writing to the Administrator that the State's mediation program meets the following program requirements:

(i) That the State's mediation program provides mediation services to covered persons with the aim of reaching mutually agreeable decisions between the parties under the program;

(ii) That the State's mediation program is authorized or administered by an agency of the State government or by the Governor of the State;

(iii) That the State's mediation program provides for training of mediators in mediation skills and in all issues covered by the State's mediation program;

(iv) That the State's mediation program shall provide confidential mediation as defined in §785.2;

(v) That the State's mediation program ensures, in the case of agricultural loans, that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program;

(vi) That the State's mediation program ensures, in the case of other issues covered by the mediation program, that persons directly affected by actions of the USDA receive adequate notification of the mediation program; and

(vii) That the State's mediation program prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status.

(b) *Request for re-certification by qualifying State.* If a State is a qualifying State at the time its request is made, the written request need only describe the changes made in the program since the previous year's request, together with such documents and information as are necessary concerning such changes, and a written certification that the remaining elements of the program will continue as described in the previous request.

### §785.4 Grants to certified State mediation programs.

(a) *Eligibility.* To be eligible to receive a grant, a State mediation program must:

(1) Be certified as described in §785.3; and

(2) Submit an application for a grant with its certification or re-certification request as set forth in this section.

(b) *Application for grant.* A State requesting a grant will submit the following to the Administrator:

(1) Application for Federal Assistance, Standard Form 424 (available in any FSA office and on the Internet, *http://www.whitehouse.gov/omb/grants/*);

(2) A budget with supporting details providing estimates of the cost of operation and administration of the program. Proposed direct expenditures will be grouped in the categories of allowable direct costs under the program as set forth in paragraph (c)(1) of this section;

(3) Other information pertinent to the funding criteria specified in § 785.7(b); and

(4) Any additional supporting information requested by FSA in connection with its review of the grant request.

(c) *Grant purposes.* Grants made under this part will be used only to pay the allowable costs of operation and administration of the components of a qualifying State's mediation program that have been certified as set forth in § 785.3(b)(2). Costs of services other than mediation services to covered persons within the State are not considered part of the cost of operation and administration of the mediation program for the purpose of determining the amount of a grant award.

(1) *Allowable costs.* Subject to applicable cost principles as set forth or referenced in § 3016.22 of this title, allowable costs for operations and administration are limited to those that are reasonable and necessary to carry out the State's certified mediation program in providing mediation services for covered persons within the State. Specific categories of costs allowable under the certified State mediation program include, and are limited to:

(i) Staff salaries and fringe benefits;

(ii) Reasonable fees and costs of mediators;

(iii) Office rent and expenses, such as utilities and equipment rental;

(iv) Office supplies;

(v) Administrative costs, such as workers' compensation, liability insurance, employer's share of Social Security, and travel that is necessary to provide mediation services;

(vi) Education and training of participants and mediators involved in mediation;

(vii) Security systems necessary to assure confidentiality of mediation sessions and records of mediation sessions;

(viii) Costs associated with publicity and promotion of the program; and

(ix) Financial advisory and counseling services for parties requesting mediation (as reasonable and necessary to prepare parties for mediation) that are performed by a person other than a state mediation program mediator and as approved under guidelines established by the state mediation program and reported to FSA.

(2) *Prohibited expenditures.* Expenditures of grant funds are not allowed for:

(i) Purchase of capital assets, real estate, or vehicles and repair, or maintenance of privately-owned property;

(ii) Political activities;

(iii) Routine administrative activities not allowable under OMB Cost Principles found in part 3015, subpart T, of this title and OMB Circular No. A–87; and

(iv) Services provided by a State mediation program that are not consistent with the features of the mediation program certified by the State, including advocacy services on behalf of a mediation participant, such as representation of a mediation client before an administrative appeals entity of the USDA or other Federal Government department or Federal or State Court proceeding.

### § 785.5 Fees for mediation services.

A requirement that non-USDA parties who elect to participate in mediation pay a fee for mediation services will not preclude certification of a certified State mediation program or its eligibility for a grant; however, if participation in mediation is mandatory for a USDA agency, a certified State mediation program may not require the USDA agency to pay a fee to participate in a mediation.

### § 785.6 Deadlines and address.

(a) *Deadlines.* (1) To be a qualifying State as of the beginning of a fiscal year and to be eligible for grant funding as of the beginning of the fiscal year, the Governor of a State or head of a State agency designated by the Governor of a State must submit a request for certification and application for grant on or before August 1 of the calendar year in which the fiscal year begins.

(2) *Requests received after August 1.* FSA will accept requests for re-certifications and for new certifications of State mediation programs after August 1 in each calendar year; however, such requests will not be considered for grant funding under § 785.7(c) until after March 1.

(3) *Requests for additional grant funds during a fiscal year.* Any request by a State mediation program that is eligible for grant funding as of the beginning of the fiscal year for additional grant funds during that fiscal year for additional, unbudgeted demands for mediation services must be submitted on or before March 1 of the fiscal year.

(b) *Address.* The request for certification or re-certification and any grant request must be mailed or delivered to: Administrator, Farm Service Agency, U.S. Department of Agriculture, Stop 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501.

### § 785.7 Distribution of Federal grant funds.

(a) *Maximum grant award.* A grant award shall not exceed 70 percent of the budgeted allowable costs of operation and administration of the certified State mediation program. In no case will the sum granted to a State exceed $500,000 per fiscal year.

(b) *Funding criteria.* FSA will consider the following in determining the grant award to a qualifying State:

(1) Demand for and use of mediation services (historical and projected);

(2) Scope of mediation services;

(3) Service record of the State program, as evidenced by:

(i) Number of inquiries;

(ii) Number of requests for and use of mediation services, historical and projected, as applicable;

(iii) Number of mediations resulting in signed mediation agreements;

(iv) Timeliness of mediation services; and

(v) Activities promoting awareness and use of mediation;

(4) Historic use of program funds (budgeted versus actual); and

(5) Material changes in the State program.

(c) *Disbursements of grant funds.* (1) Grant funds will be paid in advance, in installments throughout the Federal fiscal year as requested by a certified State mediation program and approved by FSA. The initial payment to a program in a qualifying State eligible for grant funding as of the beginning of a fiscal year shall represent at least one-fourth of the State's annual grant award. The initial payment will be made as soon as practicable after certification, or re-certification, after grant funds are appropriated and available.

(2) Payment of grant funds will be by electronic funds transfer to the designated account of each certified State mediation program, as approved by FSA.

(d) *Administrative reserve fund.* After funds are appropriated, FSA will set aside 5 percent of the annual appropriation for use as an administrative reserve.

(1) Subject to paragraph (a) of this section and the availability of funds, the Administrator will allocate and disburse sums from the administrative reserve in the following priority order:

(i) Disbursements to cover additional, unbudgeted demands for mediation services in qualifying States eligible for grant funding as of the beginning of the fiscal year;

(ii) Grants to qualifying States whose requests for new certification or re-certification were received between August 2 and March 1. A previously qualifying State that submits a request for re-certification received after August 1 may receive a grant award effective as of the beginning of the fiscal year. A newly qualifying State that submits a request for certification received after August 1 may receive a grant award effective March 31 of the fiscal year.

(iii) Any balance remaining in the administrative reserve will be allocated pro rata to certified State mediation programs based on their initial fiscal year grant awards.

(2) All funds from the administrative reserve will be made available on or before March 31 of the fiscal year.

(e) *Period of availability of funds.* (1) Certified State mediation programs receiving grant funds are encouraged to obligate award funds within the Federal fiscal year of the award. A State may, however, carry forward any funds disbursed to its certified State mediation program that remain unobligated at the end of the fiscal year of award for use in the next fiscal year for costs resulting from obligations in the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the

lesser of 70 percent of the State's budgeted allowable costs of operation and administration of the certified State mediation program for the subsequent fiscal year, or $500,000.

(2) Grant funds not spent in accordance with this part will be subject to de-obligation and must be returned to the USDA.

### § 785.8 Reports by qualifying States receiving mediation grant funds.

(a) *Annual report by certified State mediation program.* No later than 30 days following the end of a fiscal year during which a qualifying State received a grant award under this part, the State must submit to the Administrator an annual report on its certified State mediation program. The annual report must include the following:

(1) A review of mediation services provided by the certified State mediation program during the preceding Federal fiscal year providing information concerning the following matters:

(i) A narrative review of the goals and accomplishments of the certified State mediation program in providing intake and scheduling of cases; the provision of background and selected information regarding the mediation process; financial advisory and counseling services, training, notification, public education, increasing resolution rates, and obtaining program funding from sources other than the grant under this part.

(ii) A quantitative summary for the preceding fiscal year, and for prior fiscal years, as appropriate, for comparisons of program activities and outcomes of the cases opened and closed during the reporting period; mediation services provided to clients grouped by program and subdivided by issue, USDA agency, types of covered persons and other participants; and the resolution rate for each category of issue reported for cases closed during the year;

(2) An assessment of the performance and effectiveness of the State's certified mediation program considering:

(i) Estimated average costs of mediation services per client with estimates furnished in terms of the allowable costs set forth in § 785.4(b)(1).

(ii) Estimated savings to the State as a result of having the State mediation program certified including:

(A) Projected costs of avoided USDA administrative appeals based on projections of the average costs of such appeals furnished to the State by FSA, with the assistance of the USDA National Appeals Division and other agencies as appropriate;

(B) In agricultural credit mediations that do not result from a USDA adverse program decision, projected cost savings to the various parties as a result of resolution of their dispute in mediation. Projected cost savings will be based on such reliable statistical data as may be obtained from State statistical sources including the certified State's bar association, State Department of Agriculture, State court system or Better Business Bureau, or other reliable State or Federal sources;

(iii) Recommendations for improving the delivery of mediation services to covered persons, including:

(A) Increasing responsiveness to needs for mediation services.

(B) Promoting increases in dispute resolution rates.

(C) Improving assessments of training needs.

(D) Improving delivery of training.

(E) Reducing costs per mediation.

(3) Such other matters relating to the program as the State may elect to include, or as the Administrator may require.

(b) *Audit report.* In addition to the auditing requirements of part 3015, subpart I and § 3016.26 of this title, any qualifying State receiving a grant under this part must submit an audit report to the Administrator in compliance with OMB Circular A–133.

### § 785.9 Access to program records.

Notwithstanding § 3015.24 of this title, the State must maintain and provide the Government access to pertinent records regarding services delivered by the certified State mediation program for purposes of evaluation, audit and monitoring of the certified State mediation program as follows:

(a) For purposes of this section, pertinent records consist of: the names and addresses of applicants for mediation services; dates mediations opened

and closed; issues mediated; dates of sessions with mediators; names of mediators; mediation services furnished to participants by the program; the sums charged to parties for each mediation service; records of delivery of services to prepare parties for mediation (including financial advisory and counseling services); and the outcome of the mediation services including formal settlement results and supporting documentation.

(b) State mediators will notify all participants in writing at the beginning of the mediation session that the USDA, including the USDA Inspector General, the Comptroller General of the United States, the Administrator, and any of their representatives will have access to pertinent records as necessary to monitor and to conduct audits, investigations, or evaluations of mediation services funded in whole or in part by the USDA.

(c) All participants in a mediation must sign and date an acknowledgment of receipt of such notice from the mediator. The certified State mediation program shall maintain originals of such acknowledgments in its mediation files for at least 5 years.

### § 785.10 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw certification of a State mediation program, terminate or suspend the grant to such program, require a return of unspent grant funds, a reimbursement of grant funds on account of expenditures that are not allowed, and may impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) The State's mediation program, at any time, does not meet the requirements for certification;

(2) The mediation program is not being operated in a manner consistent with the features of the program certified by the State, with applicable regulations, or the grant agreement;

(3) Costs that are not allowed under § 785.4(b) are being paid out of grant funds;

(4) The mediation program fails to grant access to mediation records for purposes specified in § 785.8; or

(5) Reports submitted by the State pursuant to § 785.7 are false, contain misrepresentations or material omissions, or are otherwise misleading.

(b) In the event that FSA gives notice to the State of its intent to enforce any withdrawal of certification or other penalty for non-compliance, USDA agencies will cease to participate in any mediation conducted by the State's mediation program immediately upon delivery of such notice to the State.

### § 785.11 Reconsideration by the Administrator.

(a) A State mediation program may request that the Administrator reconsider any determination that a State is not a qualifying State under § 785.3 and any penalty decision made under § 785.10. The decision of the Administrator upon reconsideration shall be the final administrative decision of FSA.

(b) Nothing in this part shall preclude action to suspend or debar a State mediation program or administering entity under part 3017 of this title following a withdrawal of certification of the State mediation program.

### § 785.12 Nondiscrimination.

The provisions of parts 15, 15b and 1901, subpart E, of this title and part 90 of title 45 apply to activities financed by grants made under this part.

### § 785.13 OMB Control Number.

The information collection requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0560–0165.

# SUBCHAPTER E—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

## PART 792—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.
792.1 Applicability.
792.2 Administration.
792.3 Definitions.
792.4 Demand for payment of debts.
792.5 Collection by payment in full.
792.6 Collection by installment payments.
792.7 Collection by administrative offset.
792.8 Priorities of offsets versus assignments.
792.9 Withholding.
792.10 Late payment interest, penalty and administrative charges.
792.11 Waiver of late payment interest, penalty charge and administrative charges.
792.12 Administrative appeal.
792.13 Additional administrative collection action.
792.14 Contact with debtor's employing agency.
792.15 Prior provision of rights with respect to debt.
792.16 Discharge of debts.
792.17 Referral of delinquent debts to credit reporting agencies.
792.18 Referral of debts to Department of Justice.
792.19 Referral of delinquent debts to IRS for tax refund offset.
792.20 Reporting discharged debts to IRS.
792.21 Referral of debts to private collection agencies.
792.22 Collection and compromise.

AUTHORITY: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR parts 101–105; 7 CFR 3.21(b).

SOURCE: 59 FR 15829, Apr. 5, 1994, unless otherwise noted.

### § 792.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Farm Service Agency (FSA) will settle and collect debts by FSA. The provisions of part 1403 of this title are applicable to actions of FSA regarding the settlement and collection of debts on the behalf of the Commodity Credit Corporation (CCC).

### § 792.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Administrator, FSA.

### § 792.3 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).

*CCC* means the Commodity Credit Corporation.

*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 debtor and preparer, under penalty of perjury.

*Claim* means an amount of money or property which has been determined by FSA, after a notice of delinquency and a demand for the payment of the debt has been made by FSA, to be owed to FSA 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 FSA 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 FSA, CCC, 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 FSA 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 § 792.4.

*Discharged debt* means any debt, or part thereof, which FSA has determined is uncollectible and has closed out, and if the amount in controversy exceeds $100,000.00, excluding interest and administrative charges, or such higher amount as may be prescribed, in which the Department of Justice has concurred in such determination.

*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 higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate.

*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.

*System of records* means a group of any records under the control of FSA or CCC 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.

### § 792.4 Demand for payment of debts.

(a) When a debt is due FSA, 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 FSA has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by FSA that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due FSA, including the principal, applicable interest, costs, and other charges;

(2) FSA' 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 § 792.10.

(4) FSA' 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) FSA' intent, if applicable, under § 792.17, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(6) FSA' intent, if applicable, under § 792.19, 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.

(7) If not previously provided, the debtor's right to request administrative review by an authorized FSA 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, if applicable.

(8) The debtor's right to a full explanation of the debt and to dispute any information in the records of FSA concerning the debt;

(9) The opportunity afforded the debtor to enter into a written agreement which is acceptable to FSA for the repayment of the debt;

(10) That FSA maintains the right to initiate legal action to collect the amount of the debt;

(11) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to FSA has not been arranged 90 days after the due date, a penalty charge shall be assessed on the unpaid balance of the debt as prescribed in § 792.10(e);

(b) When FSA deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

### § 792.5 Collection by payment in full.

Except as FSA may provide, FSA 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, FSA will impose late payment interest, as provided in § 792.10, unless such interest is waived as provided in § 792.11.

### § 792.6 Collection by installment payments.

(a) Payments in installments may be arranged, at FSA' 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 FSA, 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 workdays following its request by FSA.

(c) All installment payment agreements shall be in writing and require the payment of interest at the late payment interest rate in effect on the date such agreement is executed, unless such interest is waived or reduced by FSA. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults.

(d) FSA 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 FSA a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to FSA, FSA 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 FSA.

**§ 792.7 Collection by administrative offset.**

(a) The provisions of this section shall apply to all debts due FSA except as otherwise provided in this part and part 1404 of this title. This section is not applicable to:

(1) FSA requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and FSA requests for salary offset against a present, former or retired employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) FSA requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 792.19;

(3) Cases in which FSA 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 FSA; and

(4) Any case in which a statute explicitly provides for or prohibits using administrative offset to collect the debt for the type of debt involved.

(b) Debts due FSA or CCC may be collected by administrative offset from amounts payable by FSA 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 chapter 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 FSA related to the debt;

(3) The debtor has been given the opportunity to enter into a written agreement which is acceptable to FSA for repayment of the debt;

(4) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(5) 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 FSA:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of FSA or the United States.

(d) A payment due any person may be offset when there is a breach of a contract or a violation of FSA program requirements, and offset is considered necessary by FSA to protect the financial interests of the Government.

(e) FSA may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraphs (b)(1) through (b)(4) of this section if:

(1) Failure to take the offset would substantially prejudice FSA' 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.

(f)(1) Judgments in favor of the United States may be offset against any amounts payable by FSA based on information provided by or obtained from the Department of Justice. Debts due any agency other than FSA which have not been reduced to judgment shall be offset against amounts payable by FSA 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 Financial Management 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.

(g)(1) After FSA has complied with the provisions of this part, FSA may request other agencies of the Government to offset amounts payable by them to persons indebted to FSA.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 792.19 shall apply.

(h)(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 FSA.

(ii) Debts to other agencies of USDA as determined by FSA.

(iii) Debts to other government agencies as determined by FSA.

(2) In the case of multiple debts involving the same debtor, FSA 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 FSA based on the facts and circumstances of the particular case.

(i) Amounts recovered by offset for FSA and CCC debts but later found not to be owed to the Government shall be promptly refunded.

(j) The debtor shall be notified whenever any offset action has been taken.

(k) Offsets made pursuant to this section shall not deprive a debtor of any right he or she might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(l) 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 FSA.

(2) When FSA 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.

(m) 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.

(n) Offset action will not be taken against payments when:

(1) A debt has been discharged as provided in § 792.16.

(2) FSA determines such action will unduly interfere with the administration of an FSA or CCC program.

(3) The debt has been delinquent for more than ten years or legal action to enforce the debt due FSA is barred by an applicable period of limitation, whichever is later.

[59 FR 15829, Apr. 5, 1994, as amended at 60 FR 43706, Aug. 23, 1995]

### § 792.8 Priorities of offsets versus assignments.

(a) No amounts payable to a debtor by FSA shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

(b) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC–36 shall be subject to offset for any debt owed to FSA or CCC or any judgment in favor of the United States without regard to the date notice of assignment was accepted by FSA or CCC.

(c) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC–252 shall be offset:

(1) Against any debt of the assignor entered on the debt record of the applicable FSA office prior to the filing of such form with FSA or CCC, or

(2) At anytime, regardless of the date of filing of such form with FSA or CCC, if the debt which is the basis for the offset arises from a judgment in favor of the United States, or under the same contract under which the payment is earned by the assignor.

(d) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which have not been reduced to judgment, and which are entered on the debt record of the appropriate FSA office prior to the date the notice of assignment was accepted by FSA or CCC.

(e) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

### § 792.9 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 FSA to ensure that the interests of FSA and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of FSA or the United States only if FSA 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 FSA;

(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 FSA;

(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 FSA;

(5) The facts available to FSA are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of FSA has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due FSA or CCC, withholding action by FSA on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

### § 792.10 Late payment interest, penalty and administrative charges.

(a) Late payment interest provisions of this section shall not apply:

(1) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged to the extent authorized under the common law or applicable statutory authority.

(2) 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;

(3) If the late payment interest is waived by FSA in accordance with § 792.11.

(4) To administrative charges as set forth in paragraph (f) of this section.

(b) FSA 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 program interest, and any other charges which are otherwise due and owing to FSA 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 FSA 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. The rate of interest assessed under the Prompt Payment Act was chosen as an alternative rate to ensure that the Government would recoup interest at a rate which was at least as high as that which it pays for late payments.

(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, including notice of late payment interest, is first mailed or hand-delivered to the debtor.

(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. FSA 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) Except as specified in paragraph (a)(2) of this section, a penalty charge of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to FSA has been agreed upon. Such penalty charge will be assessed retroactively from the date late payment interest began to accrue and applied on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) FSA 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 the penalty charge assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

### § 792.11 Waiver of late payment interest, penalty charge and administrative charges.

(a) FSA 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) FSA may waive the assessment and collection of all or a portion of the penalty charge 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 such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any 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, the penalty charge and administrative charges under this part may be waived by FSA in full, or in part, if it is determined by the Controller, FSA, or his or her designee,

that such action is in the best interest of FSA.

### § 792.12 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under part 24 of this title or part 780 of this chapter or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this chapter, or other applicable appeal procedures, of FSA' 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 FSA' initial demand letter, unless a longer period is specified in the initial demand letter.

### § 792.13 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 FSA to collect debts owed to the Government.

### § 792.14 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, FSA 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, 3 CFR, 1964–1965 Comp., p 306.

### § 792.15 Prior provision of rights with respect to debt.

FSA will not provide an administrative appeal with respect to issues which were raised or should have been raised at any administrative review requested by the debtor 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 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.

### § 792.16 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed FSA shall be discharged with the concurrence of the Department of Justice, if applicable, 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 FSA and no appeal will be taken by FSA;

(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 § 792.7(b)(5).

(b) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 792.20.

### § 792.17 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by FSA and the rights that will be afforded to debtors when FSA reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, FSA 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 § 792.4, of FSA' intent to make such a report. Such notification shall include:

(1) FSA' 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 FSA, 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 FSA has reported any delinquent debt to a credit reporting agency.

(e)(1) FSA 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) FSA 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 FSA.

(g) FSA 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 FSA 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, FSA shall, upon request of the debtor, provide for a review of the debt in accordance with § 792.12. 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 § 792.12.

(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, FSA 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 Administrator, FSA, 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 FSA 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) FSA shall not report delinquent debt information to credit reporting agencies when: (i) The debtor has entered a repayment agreement covering the debt with FSA, and such agreement is still valid; or

(ii) FSA 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) The provisions of paragraphs (a) through (k) of this section apply to commercial debts owed by farm producers and all personal debts. All commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies without following the provisions of paragraphs (a) through (k) of this section.

### § 792.18 Referral of debts to Department of Justice.

(a) Debts that exceed $100,000.00 exclusive of interest, penalties, and administrative charges, or such higher amount as may be prescribed, shall be

referred to the Department of Justice before they can be discharged.

(b) Debts which cannot be compromised or on which collection action cannot be suspended or terminated, may be referred to the Department of Justice for collection action. Claims of less than $600.00 exclusive of interest, penalties, and administrative costs will not be referred to the Department of Justice unless:

(1) Referral is important to a significant enforcement policy, or

(2) The debtor not only has the clear ability to pay the claim, but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

### § 792.19 Referral of delinquent debts to IRS for tax refund offset.

FSA 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.

### § 792.20 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, FSA may report to IRS as discharged debts on IRS Form 1099–G 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 FSA 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.

### § 792.21 Referral of debts to private collection agencies.

If FSA' collection efforts have been unsuccessful after 90 days from the date of delinquency, the head of the agency or his designee may enter into a contract with any person or organization, under such terms and conditions as the head of the agency or his designee considers appropriate for collection services to recover debts owed to FSA.

### § 792.22 Collection and compromise.

The Administrator, FSA, or his designee may compromise any claim of the Government of not more than $100,000.00 exclusive of interest, penalties, and administrative charges, or such higher amount as may be prescribed, that has not been referred to another executive or legislative agency for further collection action.

## PART 795—PAYMENT LIMITATION

GENERAL

Sec.
795.1 [Reserved]
795.2 Applicability.
795.3 Definitions.
795.4 Family members.
795.5 Timing for determining status of persons.
795.6 Multiple individuals or other entities.
795.7 Entities or joint operations not considered as a person.
795.8 Corporations and stockholders.
795.9 Estate or trust.
795.10 Club, society, fraternal or religious organization.
795.11 Husband and wife.
795.12 Minor children.
795.13 Other cases.
795.14 Changes in farming operations.
795.15 Determination whether agreement is a share lease or a cash lease.
795.16 Custom farming.
795.17 Scheme or device.
795.20 Joint and several liability.
795.21 Appeals.
795.22 Interpretations.
795.23 Paperwork Reduction Act assigned number.
795.24 Relief.

AUTHORITY: Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat, 1444, as amended, 7 U.S.C 1308; Pub. L. 99–500 and Pub. L. 99–591.

SOURCE: 43 FR 9784, Mar. 10, 1978, unless otherwise noted.

GENERAL

### § 795.1 [Reserved]

### § 795.2 Applicability.

(a) The provisions of this part are applicable to payments when so provided by the individual program regulations

under which the payments are made. The amount of the limitation shall be as specified in the individual program regulations.

(b) The limitation shall be applied to the payments for a commodity for a crop year.

(c) The limitation shall not be applicable to payments made to States, political subdivisions, or agencies thereof for participation in the programs on lands owned by such States, political subdivisions, or agencies thereof so long as such lands are farmed primarily in the direct furtherance of a public function. However, the limitation is applicable to persons who rent or lease land owned by States, political subdivisions, or agencies thereof.

(d) The limitation shall not be applicable to payments made to Indian tribal ventures participating in the programs where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that no more than the program payment limitation shall accrue directly or indirectly to any individual Indian and the State committee reviews and approves the exemption.

(e) Except as provided in part 1497 of this title, this part shall not be applicabie to contracts entered into on or after August 1, 1988 in accordance with part 704 of this chapter.

[49 FR 14719, Apr. 13, 1984, as amended at 51 FR 8453, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986; 53 FR 29570, Aug. 5, 1988]

### § 795.3 Definitions.

(a) The terms defined in part 719 of this chapter, governing reconstitutions of farms, shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b)(1) Subject to the provisions of this part, the term ''person'' shall mean an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered to be a separate person for the purposes of this part with respect to any crop, in addition to any other provision of this part, an individual or other legal; entity must:

(i) Have a separate and distinct interest in the crop or the land on which the crop is produced;

(ii) Exercise separate responsibility for such interest; and

(iii) Be responsible for payment of the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(2) The term ''person'' shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.

(c) The term ''family member'' shall mean the individual, the great-grandparent, grand-parent, child, grandchild, and great-grandchild of such individual and the spouses of all such individuals.

(d) The term ''separate unit'' shall mean an individual who, prior to December 31, 1985: (1) Had been engaged in a separate farming operation and (2) in accordance with the provisions of this part, had been determined to be a separate person or could have so determined under the circumstances existing at such time.

[52 FR 26295, July 14, 1987]

### § 795.4 Family members.

Effective for the 1987 through 1990 crops, an individual shall not be denied a determination that such individual was a ''person'' solely on the basis that:

(a) A family member cosigns for, or makes a loan to, such individual and leases, loans or gives equipment, land or labor to such an individual; and

(b) Such family members were organized as separate units prior to December 31, 1985.

[52 FR 26295, July 14, 1987]

### § 795.5 Timing for determining status of persons.

Except as otherwise set forth in this part, the status of individuals or entities as of March 1, or such other date as may be determined and announced by the Administrator shall be the basis on which determinations are made in accordance with this part for the year for which the determination is made.

[51 FR 21836, June 16, 1986; 51 FR 36905, Oct. 16, 1986]

### §795.6 Multiple individuals or other entities.

The rules in §§795.5 through 795.16 shall be used to determine whether certain multiple individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the limitation. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of persons shall apply.

### §795.7 Entities or joint operations not considered as a person.

A partnership, joint venture, tenants-in-common, or joint tenants shall not be considered as a person but, notwithstanding the provisions of §795.3, each individual or other legal entity who shares in the proceeds derived from farming by such joint operations shall be considered a separate person, except as otherwise provided in this part, and shall be listed as a producer for payment purposes on program documents. The payment shares listed on the program documents for each individual or other legal entity shall be the same as each individual or other legal entity shares in the proceeds derived from farming by such joint operation. Notwithstanding the foregoing, each individual or other legal entity who shares in the proceeds derived from farming by such joint operation shall not be considered as a separate person unless the individual or other legal entity is actively engaged in the farming operations of the partnership or other joint operation. An individual or other legal entity shall be considered as actively engaged in the farming operation only if its contribution to the joint operation is commensurate with its share in the proceeds derived from farming by such joint operation. Members of the partnership or joint venture must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the proceeds. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual. If the contribution consists substantially of capital, such capital must have been contributed directly to the joint operation by the individual or other legal entity and not acquired as a result of (a) a loan made to the joint operation, (b) a loan which was made to such individual or other legal entity by the joint operation or any of its members or related entities, or (c) a loan made to such individual or other legal entity which was guaranteed by the joint operation or any of its members or related entities.

### §795.8 Corporations and stockholders.

(a) A corporation (including a limited partnership) shall be considered as one person, and an individual stockholder of the corporation may be considered as a separate person to the extent that such stockholder is engaged in the production of the crop as a separate producer and otherwise meets the requirements of §795.3, except that a corporation in which more than 50 percent of the stock is owned by an individual (including the stock owned by the individual's spouse, minor children, and trusts for the benefit of such minor children), or by a legal entity, shall not be considered as a separate person from such individual or legal entity.

(b) Where the same two or more individuals or other legal entities own more than 50 percent of the stock in each of two or more corporations, all such corporations shall be considered as one person.

(c) The percentage share of the value of the stock owned by an individual or other legal entity shall be determined as of March 1 of the crop year, except that where a stockholder voluntarily acquires stock after March 1 and before the harvest of the crop, the amount of any stock so acquired shall be included in determining the percentage share of the value of the stock owned by the stockholder. Where there is only one class of stock, a stockholder's percentage share of the value of the outstanding stock shall be equal to the percentage of the outstanding stock owned by the stockholder. If the corporation has more than one class of stock the percentage share of the value of the stock owned by a stockholder shall be determined by the Deputy Administrator on the basis of market quotations, and if market quotations

are lacking or too scarce to be recognized the percentage share of the value of the stock shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value, including the rights and privileges of the various stock issues.

(Title I, Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93–86, 87 Stat. 221 (7 U.S.C. 1307) and under Title I, Rice Production Act of 1975, Pub. L. 94–214, 90 Stat. 181 (7 U.S.C. 428c note), and Pub. L. 95–156, 91 Stat. 1264 (7 U.S.C. 1307 note, 7 U.S.C. 1307, 7 U.S.C. 1441))

[43 FR 9784, Mar. 10, 1978, as amended at 45 FR 10311, Feb. 15, 1980; 45 FR 11795, Feb. 22, 1980]

### § 795.9 Estate or trust.

(a) An estate or irrevocable trust shall be considered as one person except that, where two or more estates or irrevocable trusts have common beneficiaries or heirs (including spouses and minor children) with more than a 50–percent interest, all such estates or irrevocable trusts shall be considered as one person.

(b) An individual heir of an estate or beneficiary of a trust may be considered as a separate person to the extent that such heir or beneficiary is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3, except that an estate or irrevocable trust which has a sole heir or beneficiary shall not be considered as a separate person from such heir or beneficiary.

(c) Where an irrevocable trust or an estate is a producer on a farm and one or more of the beneficiaries or heirs of such trust or estate are minor children, the minor children's pro rata share of the program payments to the trust or estate shall be attributed to the parent of the minor children except as otherwise provided in § 795.12.

(d) A revocable trust shall not be considered as a separate person from the grantor.

### § 795.10 Club, society, fraternal or religious organization.

Each individual club, society, fraternal or religious organization may be considered as a separate person to the extent that each such club, society, fraternal or religious organization is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3.

### § 795.11 Husband and wife.

With respect to the 1988 crop year, a husband and wife shall be considered to be one person except that such individuals who, 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 the operations remain separate and distinct from any farming operation conducted by the other spouse if such individuals have executed a Contract to Participate in the 1988 Price Support and Production Adjustment Programs by April 15, 1988. Such individuals must file a form FSA–561 with the county committee for each such farming operation by July 8, 1988, if they desire to be considered as separate persons under this section.

[53 FR 21410, June 8, 1988]

### § 795.12 Minor children.

(a) A minor child and his parents or guardian (or other person responsible for him) shall be considered as one person, except that the minor child may be considered as a separate person if such minor child is a producer on a farm in which the parents or guardian or other person responsible for him (including any entity in which the parents or guardian or other person responsible for him has a substantial interest, i.e., more than a 20-percent interest) takes no part in the operation of the farm (including any activities as a custom farmer) and owns no interest in the farm or allotment or in any portion of the production on the farm, and if such minor child:

(1) Is represented by a court-appointed guardian who is required by law to make a separate accounting for the minor and ownership of the farm is vested in the minor, or

(2) Has established and maintains a different household from his parents or guardian and personally carries out the actual farming operations on the farm for which there is a separate accounting, or

(3) Has a farming operation resulting from his being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(b) A person shall be considered a minor until he reaches 18 years of age. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor for purposes of applying the regulations.

### § 795.13 Other cases.

Where the county committee is unable to determine whether certain individuals or legal entities involved in the production of a commodity are to be treated as one person or separate persons, all the facts regarding the arrangement under which the commodity is produced shall be submitted to the State committee for decision. Where the State committee is unable to determine whether such individuals or legal entities are to be treated as one person or separate persons, all the facts regarding the arrangement under which the farming operation is conducted shall be submitted to the Deputy Administrator for decision.

### § 795.14 Changes in farming operations.

(a) Subject to the provisions of this part, a person may exercise his or her right heretofore existing under law, to divide, sell, transfer, rent, or lease his or her property if such division, sale, transfer, rental arrangement, or lease is legally binding as between the parties thereto. However, any document representing a division, sale, transfer, rental arrangement, or lease which is fictitious or not legally binding as between the parties thereto shall be considered to be for the purpose of evading the payment limitation and shall be disregarded for the purpose of applying the payment limitation. Any change in farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive.

(b) A substantive change includes, for example, a substantial increase or decrease in the size of the farm by purchase, sale, or lease; a substantial increase or decrease in the size of allotment by purchase, sale, or lease; a change from a cash lease to a share lease or vice versa; and dissolution of an entity such as a corporation or partnership.

(c) Examples of the types of changes that would not be considered as substantive are the following:

*Example 1.* A corporation is owned equally by four shareholders. The corporation owns land, buildings, and equipment and in the prior year carried out substantial farming operations. Three of the shareholders propose forming a partnership which they would own equally. The partnership would cash lease land and equipment from the corporation with the objective of having the three partners considered as separate persons for purposes of applying the payment limitation under the provisions of § 795.7 of the regulations.

The formation of such a partnership and the leasing of land from a corporation in which they hold a major interest would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the partners would be limited to a single payment limitation.

*Example 2.* Three individuals each have individual farming operations which, if continued unchanged, would permit them to have a total of three payment limitations.

The three individuals propose forming a corporation which they would own equally. The corporation would then cash lease a portion of the farmland owned and previously operated by the individuals with the objective of having the corporation considered as a separate person for purposes of applying the payment limitation under the provisions of § 795.8 of the regulations. The formation of such a corporation and the leasing of land from the stockholders would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the three individuals would be limited to three payment limitations.

### § 795.15 Determining whether agreement is a share lease or a cash lease.

(a) *Cash lease.* If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(b) *Share lease.* If a rental agreement contains provisions that require the

payment of rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

[51 FR 8454, Mar. 11, 1986 and 51 FR 36905, Oct. 16, 1986]

### § 795.16 Custom farming.

(a) Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis, except that, for the purpose of applying the provisions of this section, the harvesting of crops and the application of agricultural chemicals by firms regularly engaged in such businesses shall not be regarded as custom farming. A person performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person performing the custom farming (and any other entity in which such person has more than a 20-percent interest) has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity.

(b) A person having more than a 20-percent interest in any legal entity performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming service is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person having such interest in the legal entity performing the custom farming has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the corp, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or in any other similar capacity.

### § 795.17 Scheme or device.

All or any part of the payments otherwise due a person under the upland cotton, wheat, feed grain and rice programs on all farms in which the person has an interest may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall 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 or submitting false information to the county committee (for example, a set-aside agreement which is entered into that differs from information furnished to the county committee concerning the manner in which program payments are actually shared, concerning the actual facts of a sale, or concerning the transfer of property) or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

### § 795.20 Joint and several liability.

Where two or more individuals or legal entities, who are treated as one person hereunder, receive payments which in the aggregate exceed the limitation, such individuals or legal entities shall be liable, jointly and severally, for any liability arising therefrom. The provisions of this part requiring the refund of payments shall be applicable in addition to any liability under criminal and civil fraud statutes.

### § 795.21 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations, part 780 of this chapter, as amended.

### § 795.22 Interpretations.

In interpretations previously issued pursuant to the payment limitation regulations and published at 36 FR 16569, 37 FR 3049, 39 FR 15021 and 41 FR 17527 shall be applicable in construing the provisions of this part.

### § 795.23 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 795) 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 control number 0560–0096.

[49 FR 14719, Apr. 13, 1984]

### § 795.24 Relief.

If a producer relied on a county committee and/or State committee ''person'' determination for a crop year and higher reviewing authority makes a more restrictive determination, the Deputy Administrator may grant relief only for such crop year if the producer was not afforded an opportunity to exercise other alternatives with respect to the producer's farming operation and the program provisions and the county committee has determined that the producers acted in good faith based upon the original ''person'' determination.

[51 FR 8454, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986]

# SUBCHAPTER F—PUBLIC RECORDS

## PART 798—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
798.1 General statement.
798.2 Public inspection and copying.
798.3 Index.
798.4 Requests for records.
798.5 Appeals.
798.6 Fees.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1 through 1.16.

SOURCE: 44 FR 10353, Feb. 20, 1979, unless otherwise noted.

### § 798.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16, and appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations as implemented by the regulations in this part, govern the availability of records of the FSA and Commodity Credit Corporation (CCC) to the public.

### § 798.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by FSA and/or CCC at the Office of the Director, Information Division, Farm Service Agency, Room 3608 South Building, P.O. Box 2415, Washington, D.C. 20013, between the hours of 8:15 and 4:45 p.m., Monday through Friday.

[50 FR 53259, Dec. 31, 1985]

### § 798.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. FSA maintains an index of FSA National Handbooks, CCC Board Dockets, decisions of the Board of Contract Appeals of the Department of Agriculture affecting FSA or CCC, and Marketing Quota Review Committee determinations. In view of the small number of public requests for such index, publication of the index is unnecessary and impractical. The index is maintained and available to the public at the office shown in § 798.2 and copies of the index are available upon request in person or by mail to that office.

### § 798.4 Request for records.

Request for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3. Reasonable requests for material not in existence may also be honored where their compilation will not unduly interfere with FSA operations and programs. Each FSA office in the field and each FSA office and division in Washington (see statement of Organization and Functions of FSA, 40 FR 18815, and of CCC, 35 FR 14951, and any amendments thereto) is designated as an ''information center'' and shall make space available to inspect and copy records in their custody not exempted from disclosure. Copies of records shall also be made available upon request. The head of each office or division is authorized to receive requests for records and to make determinations regarding requests for records in the office's custody in accordance with 7 CFR 1.4(c). Requests to Washington divisions and offices shall be addressed to USDA, FSA, P.O. Box 2415, Washington, D.C. 20013. The heads of FSA field offices shall be addressed as listed in the local telephone directory under ''U.S. Government, Department of Agriculture, FSA''. Names and addresses of heads of field offices may also be obtained from the office indicated in § 798.2.

### § 798.5 Appeals.

Any person whose request under § 798.4 of this part is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, FSA (Executive Vice-President, CCC), USDA, FSA, P.O. Box 2415, Washington, D.C. 20013.

### § 798.6 Fees.

This schedule supplements the fee schedule in 7 CFR, part 1, subpart A,

appendix A and sets forth the fees to be charged by FSA for providing copies of records, materials, and services not covered in appendix A:

(a) Records, materials and services furnished without cost.

(1) One copy each of related directives, or blank forms required by FSA for program participation, if requester is a program participant.

(2) List of names and addresses of county and/or community committee members, and names of county employees in the county.

(3) One copy of an investigation report furnished to an appellant for a program appeal.

(b) Records, materials and services for which fees are charged.

(1) *National handbooks.* Three dollars for the first copy. One dollar for each additional copy. (The term ''copy'' includes all national amendments to date. They will be furnished separately for the requester to assemble).

(2) *Field supplementation to national handbooks.* Five cents per page, not to exceed $3, for each supplement.

(3) *Computerized records.* The requester shall furnish the necessary reels when computerized records are furnished on magnetic tape.

# SUBCHAPTER G—ENVIRONMENTAL PROTECTION

## PART 799—ENVIRONMENTAL QUALITY AND RELATED ENVIRONMENTAL CONCERNS—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT


Sec.
799.1 Background.
799.2 Purpose.
799.3 Applicability.
799.4 Definitions.
799.5 FSA officials and offices responsible for carrying out NEPA.
799.6 Adoption of regulations issued by others in implementing the procedural provisions of NEPA.
799.7 Early involvement in private and state and local activities requiring Federal approval.
799.8 Making supplements to EISs part of the final administrative record.
799.9 Ensuring that environmental factors are considered in agency decision-making.
799.10 Criteria and identification of FSA actions as to degree of involvement under the NEPA process.
799.11 Expedited procedures.
799.12 Program termination.
799.13 Environmental information.

APPENDIX 1 TO PART 799—ORGANIZATION CHART—FSA-USDA

APPENDIX 2 TO PART 799—FORM FSA–929


AUTHORITY: Pub. L. 91–190, 83 Stat. 852, as amended (42 U.S.C. 4321); E.O. 11514; E.O. 11991; 40 CFR 1507.3, 7 CFR 3100.

SOURCE: 45 FR 32313, May 16, 1980, unless otherwise noted.

### § 799.1 Background.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. Section (102)(2) also requires all Federal agencies to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Executive Order 11991 of May 24, 1977 (42 FR 26967), directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500 through 1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. The U.S. Department of Agriculture adopted such procedures in a final rule (7 CFR part 3100) published on July 30, 1979. The CEQ regulations at 40 CFR 1507.3 (b) identify those items which must be addressed in agency procedures.

### § 799.2 Purpose.

The purpose of this part is to establish agency procedures which supplement NEPA regulations issued by CEQ and USDA. This regulation, together with such NEPA regulations issued by CEQ and USDA, will supersede regulations issued by the Farm Service Agency (FSA) on December 20, 1974 (39 FR 43996).

### § 799.3 Applicability.

This part, together with NEPA regulations issued by CEQ and USDA, applies to all programs administered by FSA which might have significant impacts on the environment.

### § 799.4 Definitions.

(a) The term *environmental evaluation* means agency appraisal of the potential or likely environmental impacts of proposed legislation, a new program, a major change in a program, an action related to a program or an action related to part of a program which will be used by the responsible agency official to determine whether or not an environmental assessment and/or an environmental impact statement is needed. Such appraisal shall relate to the same environmental concerns as an environmental impact statement. The environmental evaluation shall particularly

focus on the adverse affects of FSA actions on the environmental factors listed on Form FSA–929 (see Appendix 2) and on the significance of the action as discussed in the CEQ regulations concerning NEPA at 40 CFR 1508.27. As required, the environmental evaluation shall be made by an interdisciplinary team.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases shall, unless the context or subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, part 719 of this chapter, as amended.

### §799.5 FSA officials and offices responsible for carrying out NEPA.

(a) *Responsible officials.* The Administrator of FSA, or his or her designee, is the responsible Federal official for carrying out the purpose of NEPA for all FSA programs. County committees, State committees, and Directors of Washington Divisions, within their respective areas of responsibility with the assistance of the FSA representative on the USDA Environmental Quality Committee, shall assist the Administrator in complying with the policies and purposes of NEPA generally, and, in particular, in determining whether the quality of the human environment will be significantly affected in implementing agency programs and preparing the necessary environmental documents.

(b) *Offices responsible for carrying out NEPA*—(1) *Washington divisions.* Washington divisions are responsible for carrying out NEPA with regard to legislative proposals and multi-State and national programs or major revisions of national programs.

(2) *State committees.* State committees are responsible for carrying out NEPA with regard to major actions in a State or area within a State.

(3) *County committees.* County committees are responsible for carrying out NEPA with regard to major actions within a county.

(c) All environmental assessments, environmental impact statements (EISs) and similar documents will be forwarded through the appropriate agency channels to the FSA representative on the USDA Environmental Quality Committee for review and submission to the Administrator.

### §799.6 Adoption of regulations issued by others in implementing the procedural provisions of NEPA.

In addition to provisions provided for in this part 799, FSA adopts the NEPA regulations issued by CEQ (40 CFR parts 1500 through 1508) and NEPA regulations issued by USDA (7 CFR part 3100).

### §799.7 Early involvement in private and state and local activities requiring Federal approval.

(a) The NEPA regulations at 40 CFR 1501.2(d) require agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal involvement.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions FSA shall:

(1) Prepare, where practicable, generic guidelines describing the scope and level of environmental information required from applicants seeking assistance from FSA as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(2) Provide such guidance on a project-by-project basis to applicants seeking assistance from FSA.

(3) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(c) The responsibilities under this section shall be coordinated by the Conservation and Environmental Protection Division of the Farm Service Agency, Washington, D.C.

(d) To facilitate compliance with paragraph (a) of this section, private applicants seeking assistance from FSA and other non-Federal entities are expected to:

(1) Contact FSA as early as possible in the planning process for guidance on the scope and level of environmental

information required to be submitted in support of their application;

(2) Conduct any studies which are deemed necessary and appropriate by FSA to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify FSA as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that FSA may coordinate all Federal environmental reviews; and

(6) Notify FSA of all known parties potentially affected by or interested in the proposed action.

### § 799.8 Making supplements to EISs part of the final administrative record.

Where FSA evaluates a proposal on the basis of a formal administrative record and an EIS on the proposal has been prepared, any supplement to the EIS shall be made a part of the formal record before a final decision on the proposal is made.

### § 799.9 Ensuring that environmental factors are considered in agency decisionmaking.

(a) The NEPA regulations at 40 CFR 1501.1 contain requirements to ensure adequate consideration of environmental factors in decisionmaking. To fulfill these requirements, FSA officials shall:

(1) Consider all relevant environmental factors in evaluating proposals for agency action;

(2) Make all relevant environmental documents, comments and responses part of the record in formal rulemaking or adjudicatory proceedings.

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action.

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) The four categories of FSA activities that have or are likely to have significant environment impacts on the human environment are:

(1) Legislative proposals.

(2) Initial program implementation.

(3) Major changes in ongoing programs.

(4) Major environmental concerns with ongoing programs.

(c) Initial NEPA involvement in program categories in paragraph (b) of this section shall begin at the time FSA begins developing proposed legislation, begins the planning stage for implementing a new or changed program or receives notice that an ongoing program may have a significant adverse impact on the quality of the human environment. Where a legislative EIS or environmental assessment is part of the formal transmittal of a legislative program proposal to Congress, such legislative EIS or assessment may negate the need for the subsequent preparation of a program impact statement when FSA implements the resulting program. The decision whether such additional statement is needed will be made by an interdisciplinary team. The NEPA process on legislative proposals and FSA programs is carried out at the national level.

(d) Individual farm participation in FSA programs will normally not require any major involvement with the NEPA process. The practices carried out under FSA programs that might have impacts on the quality of the human environment will normally have been discussed in environmental assessments or impact statements on the applicable programs. However, for those practices that might significantly affect the quality of the human environment, the county committee

shall make an environmental evaluation before approval. If the environmental evaluation shows that the implementation of a proposed FSA practice on an individual farm will have significant adverse affects on the quality of the human environment, the county committee will not approve the practice implementation until after the completion of the NEPA-EIS process in accordance with this part. For those actions for which technical assistance is provided by an agency other than FSA, and such technical agency is required by its regulations to implement NEPA requirements when providing such assistance, the county committee shall use the environmental determination and considerations of such agency instead of duplicating the NEPA-EIS process. Individual farm participation in acreage set-aside, acreage allotments, price support and loans and other similar or related programs will not significantly affect the quality of the human environment.

(e) Pooling agreements and special projects carried out under several FSA programs involving two or more farmers in a local geographic area will not normally require any major involvement with the NEPA process. However, the county committee shall, with the assistance of a local interdisciplinary team, as necessary, make an environmental evaluation of proposed pooling agreements or special projects that have a potential for significantly affecting the quality of the human environment. The NEPA process shall begin with the initial involvement of FSA personnel in the planning or development of pooling agreements or special projects. If it is determined from an environmental evaluation that the implementation of a proposed pooling agreement or a proposed special project will have a significant adverse impact on the quality of the human environment, the completion of the NEPA-EIS process in accordance with these regulations will be necessary before approval. For those actions for which technical assistance is provided by an agency other than FSA and such technical agency is required by its regulations to implement NEPA when providing such assistance the county committee shall use the environmental determinations and considerations of such agency instead of duplicating the NEPA-EIS process.

### § 799.10 Criteria and identification of FSA actions as to degree of involvement under the NEPA process.

(a) FSA will for each of its legislative proposals, initial program implementations, program changes or any actions under its ongoing programs make a determination by the use of an environmental evaluation as to whether or not an environmental assessment or EIS is required.

(b) The NEPA regulations issued by CEQ at 40 CFR 1507.3(b)(2) in conjunction with the regulations at 40 CFR 1508.4 require agencies to determine those typical classes of actions for treatment under NEPA. The typical classes of FSA actions for treatment under NEPA are set forth as follows:

(1) Actions normally requiring an EIS are:

(i) Production adjustment programs to balance supply and demand of specified commodities, through cropland set-aside or other acreage diversion.

(ii) Agricultural Conservation Program.

(iii) Rural Clean Water Program.

(iv) Other major actions that are determined after an environmental evaluation and/or an environmental assessment to significantly affect the quality of the human environment.

(2) Actions normally not requiring an assessment or an EIS are:

(i) Individual farm participation in FSA programs.

(ii) Pooling agreements and special projects under FSA programs.

(iii) Production adjustment programs for tobacco, peanuts and extra long staple cotton.

(iv) Emergency Conservation Program.

(v) Water Bank Program.

(vi) Forestry Incentives Program.

(vii) Sugar Program.

(viii) Wool and Mohair Incentives Program.

(ix) Bee and Dairy Indemnity Programs.

(x) Commodity Income and Support and Disaster Protection Programs.

(xi) Facility Loan Program.

(xii) Grain Reserve Program.

(xiii) Livestock Feed Program.

(xiv) Naval Stores Program.

(xv) Indian Acute Distress Donation Program.

(xvi) Other major actions that are determined after an environmental evaluation not to significantly affect the quality of the human environment.

(c) FSA will independently determine by an environmental evaluation whether an environmental assessment or an EIS is required on actions included in paragraph (b) of this section where the presence of extraordinary circumstances or other unforseeable factors indicate that some other level of environmental review may be appropriate.

(d) If an environmental evaluation indicates that an action will significantly affect the quality of the human environment, the preparation of an environmental assessment and/or an EIS will be necessary before the action is carried out.

### § 799.11 Expedited procedures.

Where emergency circumstances make it necessary to take action with significant environmental impact without following the provisions of the NEPA regulations issued by CEQ, USDA, and FSA, FSA will, by working through the USDA Office of Environmental Quality, consult with CEQ and/or EPA about alternative arrangements (7 CFR 3100.35).

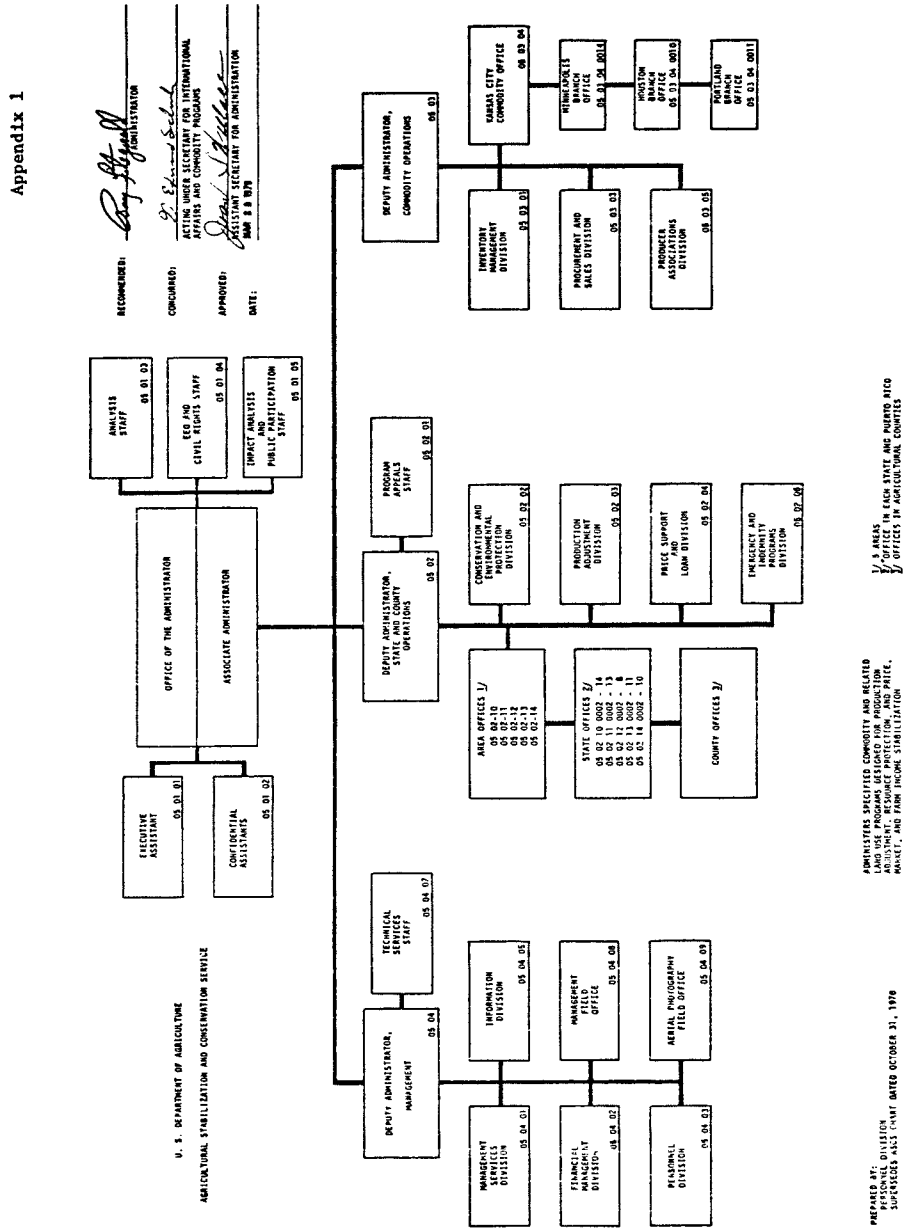
### § 799.12 Program termination.

An environmental assessment or an EIS will not be needed when a program or part of a program is discontinued because of a mandatory legislative requirement where the enabling legislation for such program does not provide authority to ameliorate or mitigate any resulting environmental effects on the quality of the human environment.

### § 799.13 Environmental information.

Interested persons may contact the Conservation and Environmental Protection Division, FSA, for information regarding FSA compliance with NEPA.

APPENDIX 1 TO PART 799—ORGANIZATION CHART FSA-USDA



APPENDIX 2 TO PART 799—FORM FSA–929

ASCS-929
(8-11-78)

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

APPENDIX 2

**MATRIX OF ENVIRONMENTAL RELATIONSHIPS**

| ENVIRONMENTAL FACTORS | POTENTIAL ALTERNATIVES | | | | |
|---|---|---|---|---|---|
| | FUTURE WITHOUT PROGRAM | PROPOSED PROGRAM | 1/ | 1/ | 1/ |
| Land Cover | | | | | |
| Soil Erosion | | | | | |
| Loss of Prime Cropland | | | | | |
| Water Quantity | | | | | |
| Water Quality | | | | | |
| Ground-Water Quality | | | | | |
| Air Quality | | | | | |
| Odor | | | | | |
| Noise | | | | | |
| Radiation | | | | | |
| Energy Supply | | | | | |
| Pesticides | | | | | |
| Fertilizers | | | | | |
| Woodland Production | | | | | |
| Wildlife Habitat | | | | | |
| Fish Production | | | | | |
| Recreation | | | | | |
| Timber Production | | | | | |
| Wetlands | | | | | |
| Natural Streams | | | | | |
| Service Industries | | | | | |
| Economic | | | | | |
| Population Migration | | | | | |
| Social Values | | | | | |
| Unique | | | | | |
| Archaeological | | | | | |
| Historical | | | | | |
| Natural | | | | | |
| Endangered Species | | | | | |
| Landscape | | | | | |

REMARKS

Relationship of Impacts Toward the Environment - + Slight; ++ Moderate; +++ Important. 1/ List alternative to proposed program.

# CHAPTER VIII—GRAIN INSPECTION, PACKERS AND STOCKYARD ADMINISTRATION (FEDERAL GRAIN INSPECTION SERVICE), DEPARTMENT OF AGRICULTURE


| *Part* | | *Page* |
|---|---|---|
| 800 | General regulations | 335 |
| 801 | Official performance requirements for grain inspection equipment | 415 |
| 802 | Official performance and procedural requirements for grain weighing equipment and related grain handling systems | 420 |
| 810 | Official United States standards for grain | 421 |
| 868 | General regulations and standards for certain agricultural commodities | 448 |

# PART 800—GENERAL REGULATIONS


DEFINITIONS

Sec.
800.0 Meaning of terms.

ADMINISTRATION

800.1 Mission.
800.2 Administrator.
800.3 Nondiscrimination—policy and provisions.
800.4 Procedures for establishing regulations, official standards, and official criteria.
800.5 Complaints and reports of alleged violations.
800.6 Provisions for hearings.
800.7 Information about the Service, Act, and regulations.
800.8 Public information.

OFFICIAL INSPECTION AND CLASS X OR CLASS Y WEIGHING REQUIREMENTS

800.15 Services.
800.16 Certification requirements for export grain.
800.17 Special inspection and weighing requirements for sacked export grain.
800.18 Waivers of the official inspection and Class X weighing requirements.

RECORDKEEPING AND ACCESS TO FACILITIES

800.25 Required elevator and merchandising records.
800.26 Access to records and facilities.

REGISTRATION

800.30 Foreign commerce grain business.
800.31 Who must register.
800.32 When to register.
800.33 How to register.
800.34 Registration fee.
800.35 Review of applications.
800.36 Certificates of registration.
800.37 Notice of change in information.
800.38 Termination and renewal of registration.
800.39 Suspension or revocation of registration for cause.

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

800.45 Availability of official services.
800.46 Requirements for obtaining official services.
800.47 Withdrawal of request for official services.
800.48 Dismissal of request for official services.
800.49 Conditional withholding of official services.
800.50 Refusal of official services and civil penalties.
800.51 Expenses of agency, field office, or Board of Appeals and Review.
800.52 Official services not to be denied.

DESCRIPTIONS

800.55 Descriptions by grade.
800.56 Requirements on descriptions.

GRAIN HANDLING PRACTICES

800.60 Deceptive actions and practices.
800.61 Prohibited grain handling practices.

FEES

800.70 Fees for official services performed by agencies.
800.71 Fees assessed by the Service.
800.72 Explanation of additional service fees for services performed in the United States only.
800.73 Computation and payment of service fees; general fee information.

KINDS OF OFFICIAL SERVICES

800.75 Kinds of official inspection and weighing services.
800.76 Prohibited services; restricted services.

INSPECTION METHODS AND PROCEDURES

800.80 Methods and order of performing official inspection services.
800.81 Sample requirements; general.
800.82 Sampling provisions by level of service.
800.83 Sampling provisions by kind of movement.
800.84 Inspection of grain in land carriers, containers, and barges in single lots.
800.85 Inspection of grain in combined lots.
800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.
800.87 New inspections.
800.88 Loss of identity.

WEIGHING PROVISIONS AND PROCEDURES

800.95 Methods and order of performing weighing services.
800.96 Weighing procedures.
800.97 Weighing grain in containers, land carriers, barges, and shiplots.
800.98 Weighing grain in combined lots.
800.99 Checkweighing sacked grain.

ORIGINAL SERVICES

800.115 Who may request original services.
800.116 How to request original services.
800.117 Who shall perform original services.
800.118 Certification.

OFFICIAL REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

800.125 Who may request reinspection services or review of weighing services.
800.126 How to request reinspection or review of weighing services.
800.127 Who shall perform reinspection or review of weighing services.

800.128 Conflicts of interest.
800.129 Certificating reinspection and review of weighing results.

APPEAL INSPECTION SERVICES

800.135 Who may request appeal inspection services.
800.136 How to request appeal inspection services.
800.137 Who shall perform appeal inspection services.
800.138 Conflict of interest.
800.139 Certificating appeal inspections.

OFFICIAL RECORDS AND FORMS (GENERAL)

800.145 Maintenance and retention of records—general requirements.
800.146 Maintenance and retention of records issued by the Service under the Act.
800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.
800.148 Maintenance and retention of records on organization, staffing, and budget.
800.149 Maintenance and retention of records on licenses and approvals.
800.150 Maintenance and retention of records on fee schedules.
800.151 Maintenance and retention of records on space and equipment.
800.152 Maintenance and retention of file samples.
800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.
800.154 Availability of official records.
800.155 Detailed work records—general requirements.
800.156 Official inspection records.
800.157 Official weighing records.
800.158 Equipment testing work records.
800.159 Related official records.

OFFICIAL CERTIFICATES

800.160 Official certificates; issuance and distribution.
800.161 Official certificate requirements.
800.162 Certification of grade; special requirements.
800.163 Divided-lot certificates.
800.164 Duplicate certificates.
800.165 Corrected certificates.
800.166 Reproducing certificates.

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

800.170 When a license or authorization or approval is required.
800.171 Who may be licensed or authorized.
800.172 Applications for licenses.
800.173 Examinations and reexaminations.
800.174 Issuance and possession of licenses and authorizations.
800.175 Termination of licenses.
800.176 Voluntary cancellation or suspension of licenses.
800.177 Automatic suspension of license by change in employment.
800.178 Summary revocation of licenses.
800.179 Refusal of renewal, suspension, or revocation of licenses for cause.
800.180 Summary cancellation of licenses.

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

800.185 Duties of official personnel and warehouse samplers.
800.186 Standards of conduct.
800.187 Conflicts of interest.
800.188 Crop year, variety, and origin statements.
800.189 Corrective actions for violations.

DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

800.195 Delegations.
800.196 Designations.
800.197 Approval as a scale testing and certification organization.
800.198 Contracts.
800.199 Conflict-of-interest provisions.

SUPERVISION, MONITORING, AND EQUIPMENT TESTING

800.215 Activities that shall be supervised.
800.216 Activities that shall be monitored.
800.217 Equipment that shall be tested.
800.218 Review of rejection or disapproval of equipment.
800.219 Conditional approval on use of equipment.

AUTHORITY: 7 U.S.C. 71–87k.

EFFECTIVE DATE NOTE: At 72 FR 39732, July 20, 2007, the authority citation to part 800 was revised, effective June 1, 2008. For the convenience of the user, the added and revised text is set forth as follows:

AUTHORITY: 7 U.S.C. 71–87k.

SOURCE: 45 FR 15810, Mar. 11, 1980, unless otherwise noted.

## DEFINITIONS

### § 800.0 Meaning of terms.

(a) *Construction.* Words used in the singular form shall be considered to imply the plural and vice versa, as appropriate. When a section; e.g., § 800.2, is cited, it refers to the indicated section in these regulations.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms shall have the meanings given for them

below. The terms defined in the Act have been incorporated herein for easy reference.

(1) *Act.* The United States Grain Standards Act, as amended (39 Stat. 482–485, as amended 7 U.S.C. 71 *et seq.*).

(2) *Additives.* Materials approved by the Food and Drug Administration or the Environmental Protection Agency and added to grain for purposes of insect and fungi control, dust suppression, or identification.

(3) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom authority has been delegated.

(4) *Agency.* A delegated State or an official agency designated by the Administrator, as appropriate.

(5) *Appeal inspection service.* An official review by a field office of the results of an original inspection service or a reinspection service.

(6) *Applicant.* An interested person who requests an official inspection or a Class X or Class Y weighing service.

(7) *Approved scale testing organization.* A State or local governmental agency, or person, approved by the Service to perform official equipment testing services with respect to weighing equipment.

(8) *Approved weigher.* A person employed by or at an approved weighing facility and approved by the Service to physically perform Class X or Class Y weighing services, and certify the results of Class Y weighing.

(9) *Approved weighing equipment.* Any weighing device or related equipment approved by the Service for the performance of Class X or Class Y weighing services.

(10) *Approved weighing facility.* An elevator that is approved by the Service to receive Class X or Class Y weighing services.

(11) *Assigned area of responsibility.* A geographical area assigned to an agency or to a field office for the performance of official inspection or Class X or Class Y weighing services.

(12) *Board appeal inspection service.* An official review by the Board of Appeals and Review of the results on an appeal inspection service.

(13) *Board of Appeals and Review.* The Board of Appeals and Review of the Service.

(14) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by an agency.

(15) *Cargo shipment.* Bulk or sacked grain that is loaded directly aboard waterborne carrier for shipment. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be considered to be a cargo shipment.

(16) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk or sacked grain.

(17) *Chapter.* Chapter VIII of the Code of Federal Regulations (7 CFR chapter VIII).

(18) *Circuit.* A geographical area assigned to a field office.

(19) *Class X or Class Y weighing equipment testing.* Any operation or procedure performed by official personnel to determine the accuracy of the equipment used, or to be used, in the performance of Class X or Class Y weighing services.

(20) *Combined lot.* Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as one lot.

(21) *Compliance.* Conformance with all requirements and procedures established by statute, regulation, instruction, or directive so that managerial, administrative, and technical functions are accomplished effectively. Compliance functions include: evaluating alleged violations, initiating preliminary investigations; initiating implementation of all necessary corrective actions; conducting management and technical reviews; administering the designation of agencies and the delegation of State agencies to perform official functions; identifying and, where appropriate, waiving and monitoring conflicts of interest; licensing agency personnel; responding to audits of FGIS programs; and reviewing and, when appropriate, approving agency fee schedules.

(22) *Container.* A carrier, or a bin, other storage space, bag, box, or other receptacle for grain.

(23) *Contract grade.* The official grade, official factors, or official criteria specified in a contract for sale or confirmation of sale; or in the absence of a contract the official grade, official factors, or official criteria specified by the applicant for official service.

(24) *Contract service.* An inspection or weighing service performed under a contract between an applicant and the Service.

(25) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection or official monitoring services.

(26) *Date of official inspection service or Class X or Class Y weighing services.* The day on which an official inspection, or a Class X or Class Y weighing service is completed. For certification purposes, a day shall be considered to end at midnight, local time.

(27) *Deceptive loading, handling, weighing, or sampling.* Any manner of loading, handling, weighing, or sampling that knowingly deceives or attempts to deceive official personnel.

(28) *Delegated State.* A State agency delegated authority under the Act to provide official inspection service, or Class X or Class Y weighing services, or both, at one or more export port locations in the State.

(29) *Department of Agriculture and Department.* The United States Department of Agriculture (USDA).

(30) *Designated agency.* A State or local governmental agency, or person, designated under the Act to provide either official inspection service, or Class X or Class Y weighing services, or both, at locations other than export port locations.

(31) *Door-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain only in the vicinity of the tailgate of the truck or trailer, the door of the railroad boxcar, or in a similarly restricted opening or area in the carrier in which the grain is located or is loaded in hopper cars or barges in such a manner that a representative sample cannot be obtained.

(32) *Elevator.* Any warehouse, storage, or handling facility used primarily for receiving, storing, or shipping grain. In a facility that is used primarily for receiving, storing, and shipping grain, all parts of the main facility, as well as annexes, shall be considered to be part of the elevator. A warehouse, storage, and handling facility that is located adjacent to and is operated primarily as an adjunct of a grain processing facility shall not be considered to be an elevator.

(33) *Elevator areas and facilities.* All operational areas, including the automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the headhouse and control rooms; all storage areas, including the bins, the interstices, the bin floor, and the basement; and all handling facilities, including the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

(34) *Employed.* An individual is employed if the individual is actually employed or the employment is being withheld pending issuance of a license under the Act.

(35) *Exporter.* Any person who ships or causes to be shipped any bulk or sacked grain in a final carrier or container in which the grain is transported from the United States to any place outside the United States.

(36) *Export elevator.* Any grain elevator, warehouse, or other storage or handling facility in the United States (i) from which bulk or sacked export grain is loaded (A) aboard a carrier in which the grain is shipped from the United States to any place outside thereof, or (B) into a container for shipment to an export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States to any place outside thereof; and (ii) which has been approved by the Service as a facility where Class X or Class Y weighing of grain may be obtained.

(37) *Export grain.* Grain for shipment from the United States to any place outside thereof.

(38) *Export port location.* A commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States.

Such locations include any coastal or border location or site in the United States which contains one or more export elevators, and is identified by the Service as an export port location.

(39) *False, incorrect, and misleading.* Respectively false, incorrect, and misleading in any particular.[2]

(40) *Federal Register.* An official U.S. Government publication issued under the Federal Register Act of July 26, 1935, as amended (44 U.S.C. 301 *et seq.*).

(41) *Field Office.* An office of the Service designated to perform or supervise official inspection services and Class X and Class Y weighing services.

(42) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, sunflower seed, canola, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.

(43) *Handling.* Loading, unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, or fumigating grain.

(44) *High Quality Specialty Grain.* Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or specify ''organic'' as defined by 7 CFR part 205. This definition expires July 31, 2010.

(45) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(46) *''IN'' movement.* A movement of grain into an elevator, or into or through a city, town, port, or other location without a loss of identity.

(47) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(48) *Interested person.* Any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise.

(49) *Interstate or foreign commerce.* Commerce from any State to or through any other State, or to or through any foreign country.

(50) *Licensee.* Any person licensed by the Service.

(51) *Loading.* Placing grain in or aboard any carrier or container.

(52) *''LOCAL'' movement.* A bin run or other inhouse movement, or grain in bins, tanks, or similar containers which are not in transit or designed to transport grain

(53) [Reserved]

(54) *Lot.* A specific quantity of grain identified as such.

(55) *Material error.* An error in the results of an official inspection service that exceeds the official tolerance, or any error in the results of a Class X or Class Y weighing service

(56) *Material portion.* A subsample, component, or sublot which is determined to be inferior to the contract or declared grade. A subsample is a material portion when it has sour, musty, or commercially objectionable foreign odors, when it is heating; or when it is of distinctly low quality. A component is a material portion when it is infested or when it is determined to be inferior in quality by more than one numerical grade to the contract or declared grade. A sublot is a material portion when a factor result causes a breakpoint to be exceeded or when a factor result exceeds specific sublot contract requirements. A sublot designated a material portion shall include only one sublot.

(57) *Merchandiser.* Any person, other than a producer, who buys and sells grain and takes title to the grain. A person who operates as a broker or commission agent and does not take title to the grain shall not be considered to be a merchandiser.

(58) *Monitoring.* Observing or reviewing activities performed under or subject to the Act for adherence to the

[1] [Reserved]

[2] A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

Act, the regulations, standards, and instructions and preparing reports thereon.

(59) *Nonregular workday.* Any Sunday or holiday.

(60) *Official agency.* Any State or local government agency, or any person, designated by the Administrator pursuant to subsection (f) of section 7 of the Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of section 7A of the Act for the conduct of Class X or Class Y weighing (other than review of weighing).

(61) *Official certificate.* Those certificates which show the results of official services performed under the Act as provided in the instructions, and any other official certificates which may be approved by the Service in accordance with the instructions.

(62) *Official criteria.* A quantified physical or chemical property of grain that is approved by the Service to determine the quality or condition of grain or other facts relating to grain.

(63) *Official factor.* A quantified physical or chemical property of grain as identified in the Official U.S. Standards for Grain.

(64) *Official forms.* License, authorizations, and approvals; official certificates; official pan tickets; official inspection or weighing logs; weight sheets; shipping bin weight loading logs; official equipment testing reports; official certificates of registration; and any other forms which may be issued or approved by the Service that show the name of the Service or an agency and a form number.

(65) *Official grade designation.* A numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain provided for in the Act.

(66) *Official inspection.* The determination (by original inspection, and when requested, reinspection and appeal inspection) and the certification, by official personnel, of the kind, class, quality, or condition of grain, under standards provided for in the Act; or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality of such grain; or other facts relating to grain under other criteria approved by the Administrator (the term ''officially inspected'' shall be construed accordingly).

(67) *Official inspection equipment testing.* Any operation or procedure by official personnel to determine the accuracy of equipment used, or to be used, in the performance of official inspection services.

(68) *Official inspection technician.* Any official personnel who perform or supervise the performance of specified official inspection services and certify the results thereof, other than certifying the grade of the grain.

(69) *Official inspector.* Any official personnel who perform or supervise the performance of official inspection services and certify the results thereof including the grade of the grain.

(70) *Official marks.* The symbols or terms ''official certificate,'' ''official grade,'' ''officially sampled,'' ''officially inspected,'' ''official inspection,'' ''U.S. inspected,'' ''loaded under continuous official inspection,'' ''official weighing,'' ''officially weighed,'' ''official weight,'' ''official supervision of weighing,'' ''supervision of weighing,'' ''officially supervised weight,'' ''loaded under continiuous official weighing,'' ''loaded under continuous official inspection and weighing,'' ''officially tested,'' ''Class X weight,'' ''official Class X weighing,'' ''Class X weighing,'' ''official Class Y weighing,'' ''Class Y weighing,'' and ''Class Y weight.''

(71) *Official personnel.* Persons licensed or otherwise authorized by the Administrator pursuant to Section 8 of the Act to perform all or specified functions involved in official inspection, Class X or Class Y weighing, or in the supervision of official inspection, or Class X or Class Y weighing.

(72) *Official sample.* A sample obtained from a lot of grain by, and submitted for official inspection by, official personnel (the term ''official sampling'' shall be construed accordingly).

(73) *Official sampler.* Any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(74) *Official stowage examination.* Any examining operation or procedure performed by official personnel to determine the suitability of a carrier or container to receive or store grain.

(75) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising the performance of official inspection services, official equipment testing services, and, when determined under an established loading plan, reinspection services and appeal inspection services.

(76) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain established under the Act describe the physical and biological condition of grain at the time of inspection.

(77) *Official weigher.* Any official personnel who perform or supervise the performance of Class X or Class Y weighing services and certify the results thereof, including the weight of the grain.

(78) *Official weighing.* (Referred to as Class X weighing.) The determination and certification by official personnel of the quantity of a lot of grain under standards provided for in the Act, based on the actual performance of weighing or the physical supervision thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection of the premises at which weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance. (The terms ''officially weigh'' and ''officially weighed'' shall be construed accordingly.)

(79) *Official weighing technician.* Any personnel who perform or supervise specified weighing services and certify the results thereof other than certifying the weight of grain.

(80) *Official weight sample.* Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

(81) *Original inspection.* An initial official inspection of grain.

(82) *''Out'' movement.* A movement of grain out of an elevator or out of a city, town, port, or other location.

(83) *Person.* Any individual, partnership, corporation, association, or other business entity.

(84) *Quantity.* Pounds or kilograms, tons or metric tons, or bushels.

(85) *Reasonably continuous operation.* A loading or unloading operation in one specific location which does not include inactive intervals in excess of 88 consecutive hours.

(86) *Regular workday.* Any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

(87) *Regulations.* The regulations in parts 800, 801, and 802 of this chapter.

(88) *Reinspection service.* An official review of the results of an original inspection service by the agency or field office that performed the original inspection service.

(89) *Respondent.* The party proceeded against.

(90) *Review of weighing service.* An official review of the results of a Class X or Class Y weighing service.

(91) *Secretary.* The Secretary of Agriculture of the United States or any person to whom authority has been delegated.

(92) *Service.* The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

(93) *Service representative.* An authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(94) *Shallow-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

(95) *Ship.* The verb ''ship'' with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance.

(96) *Shiplot grain.* Grain loaded aboard, or being loaded aboard, or discharged from an ocean-going vessel including a barge, lake vessel, or other vessel of similar capacity.

(97) *Shipper's Export Declaration.* The Shipper's Export Declaration certificate filed with the U.S. Department of Commerce, Bureau of Census.

(98) *Specified service point.* A city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and within which the agency or one or more of its inspectors or weighers is located.

(99) *Standardization.* The act, process, or result of standardizing methodology and measurement of quality and quantity. Standardization functions include: compiling and evaluating data to develop and to update grading and weighing standards, developing or evaluating new methodology for determining grain quality and quantity, providing reference standards for official grading methods, and reviewing official results through the use of a quality control and weight monitoring program.

(100) *State.* Any one of the States (including Puerto Rico) or territories or possessions of the United States (including the District of Columbia).

(101) *Submitted sample.* A sample submitted by or for an interested person for official inspection, other than an official sample.

(102) *Supervision.* The effective guidance of agencies, official personnel and others who perform activities under the Act, so as to reasonably assure the integrity and accuracy of the program activities. Supervision includes overseeing, directing, and coordinating the performance of activities under the Act, reviewing the performance of these activities; and effecting appropriate action. FGIS supervisory personnel supervise agencies, official personnel and others who perform activities under the Act. Agency supervisors are responsible for the direct supervision of their own official personnel and employees. FGIS provides oversight, guidance, and assistance to agencies as they carry out their responsibilities.

(103) *Supervision of weighing* (Referred to as Class Y weighing.) Such supervision by official personnel of the grain-weighing process as is determined by the Administrator to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance.

(104) *United States.* The States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia).

(105) *Use of official inspection service.* The use of the services provided under a delegation or designation or provided by the Service.

(106) *Uniform in quality.* A lot of grain in which there are no material portions.

(107) *Warehouseman's sampler.* An elevator employee licensed by the Service to obtain samples of grain for a warehouseman's sample-lot inspection service. Warehouseman's samplers are not considered official personnel, but they are licensed under authority of section 11 of the Act.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36068, Sept. 14, 1984; 49 FR 37055, Sept. 21, 1984; 49 FR 49586, Dec. 21, 1984; 52 FR 6495, Mar. 4, 1987; 55 FR 24041, June 13, 1990; 57 FR 3273, Jan. 29, 1992; 60 FR 5835, Jan. 31, 1995; 70 FR 21923, Apr. 28, 2005; 70 FR 73558, Dec. 13, 2005]

ADMINISTRATION

## § 800.1 Mission.

The mission of the Federal Grain Inspection Service is to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities by:

(a) Establishing descriptive standards and terms,

(b) Accurately and consistently certifying quality,

(c) Providing for uniform official inspection and weighing,

(d) Carrying out assigned regulatory and service responsibilities, and

(e) Providing the framework for commodity quality improvement incentives to both domestic and foreign buyers.

[54 FR 9197, Mar. 6, 1989]

## § 800.2 Administrator.

The Administrator is delegated, from the Secretary, responsibility for administration of the United States

Grain Standards Act and responsibilities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Administrator is responsible for the establishment of policies, guidelines, and regulations by which the Service is to carry out the provisions of the Act and the Agricultural Marketing Act of 1946. The regulations promulgated under the Agricultural Marketing Act of 1946 appear at part 68 of this title (7 CFR part 68). The Administrator is authorized by the Secretary to take any action required by law or considered to be necessary and proper to the discharge of the functions and services under the Act. The Administrator may delegate authority to the Deputy Administrator and other appropriate officers and employees. The Administrator may, in emergencies or other circumstances which would not impair the objectives of the Act, suspend for period determined by the Administrator any provision of the regulations or official grain standards. The Administrator may authorize research; experimentation; and testing of new procedures, equipment, and handling techniques to improve the inspection and weighing of grain. The Administrator may waive the official inspection and official weighing requirements pursuant to Section 5 of the Act.

[60 FR 5835, Jan. 31, 1995]

### § 800.3 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*), (Pub. L. 88–352).

### § 800.4 Procedures for establishing regulations, official standards, and official criteria.

Notice of proposals to prescribe, amend, or revoke regulations, official standards, and official criteria under the Act shall be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). Proposals to establish, amend, or revoke grain standards will be made effective not less than 1 calendar year after promulgation unless, for good cause, the Service determines that the public health, interest, or safety require that they become effective sooner. Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations, Official U.S. Standards for Grain, or official criteria may do so in accordance with § 1.28 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.28).

### § 800.5 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with § 1.133 of the regulations of the Office of the Secretary of Agriculture (7 CFR 1.133) and with the regulations and the instructions.

(b) *Reinspection, review of weighing, and appeal services.* Complaints involving the results of official inspection or Class X or Class Y weighing services shall, to the extent practicable, be submitted as requests for a reinspection service, a review of weighing service, an appeal inspection service, or a Board appeal inspection service as set forth in these regulations.

(c) *Foreign buyer complaints.* Inquiries or complaints from importers or other purchasers in foreign countries involving alleged discrepancies in the quality or weight of officially inspected or Class X weighed export grain shall, to the extent possible, be submitted by the importers or purchasers to the appropriate U.S. Agricultural Attache in accordance with § 2.68(a)(14) of the regulations of the Office of the Secretary of Agriculture (7 CFR 2.68(a)(14)) and the instructions issued by the Foreign Agricultural Service of the Department.

[45 FR 15810, Mar. 11, 1980, as amended at 54 FR 5924, Feb. 7, 1989]

### § 800.6 Provisions for hearings.

Opportunities will be provided for hearings prescribed or authorized by sections 7(g)(3), 7A(c)(2), 9, 10(d), and 17A(d) of the Act, and the hearings shall be conducted in accordance with

the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 CFR, part 1, subpart H).

### § 800.7 Information about the Service, Act, and regulations.

Information about the Grain Inspection, Packers and Stockyards Administration, Service, Act, regulations, official standards, official criteria, rules of practice, instructions, and other matters related to the official inspection or Class X or Class Y weighing of grain may be obtained by telephoning or writing the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, P.O. Box 96454, Washington, D.C. 20090–6454, or any field office or agency of the Service.

[60 FR 5836, Jan. 31, 1995]

### § 800.8 Public information.

(a) *General.* This section is issued in accordance with §§1.1 through 1.23 of the regulations of the Secretary of Agriculture in part 1, subpart A, of subtitle A of title 7 (7 CFR 1.1 through 1.23), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.5, will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, at 14th Street and Independence Avenue, SW., Washington, D.C. 20250. The public may request access to these materials during regular working hours, 8:00 a.m. to 4:30 p.m., est, Monday through Friday except for holidays.

(c) *Indexes.* FGIS shall maintain an index of all material required to be made available in 7 CFR 1.5. Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable, because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6 and shall be addressed as follows: Office of the Administrator, Grain Inspection, Packers and Stockyards Administration; FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, D.C. 20090–6454.

(e) *Appeals.* Any person whose request under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.13. Appeals shall be addressed to the Administrator, Grain Inspection, Packers and Stockyards Administration, FOIA Appeal, P.O. Box 96454, Washington, D.C. 20090–6454.

(Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884; (7 U.S.C. 76, 87e))

[48 FR 57467, Dec. 30, 1983, as amended at 54 FR 5924, Feb. 7, 1989; 60 FR 5836, Jan. 31, 1995]

## OFFICIAL INSPECTION AND CLASS X OR CLASS Y WEIGHING REQUIREMENTS

### § 800.15 Services.

(a) *General.* These regulations implement requirements for a national inspection and weighing system. This system promotes the uniform and accurate application of the official grain standards and provides inspection and weighing services required by the Act and as requested by applicants for official services. The types and kinds of services available under the Act and regulations can be obtained at all specified service points in the United States and on U.S. grain in Canadian ports.

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements.*—(1) *Export grain.* Exporters are responsible for (i) complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain and (ii) having all corn, as defined in §810.401, exported from the United States tested

for aflatoxin contamination unless the buyer and seller agree not to have the corn tested. The Service shall perform the aflatoxin testing service unless the buyer and seller agree to have the corn tested by an entity other than the Service.

(2) *Intercompany barges.* Operators of export elevators at export port locations are responsible for complying with Class X weighing requirements and regulations covering intercompany grain shipments received by barge.

(3) *Grain in marked containers.* When grain is in a container that bears an official grade designation or mark, the person who places the designation or mark on the container or the person who places the grain in a container that bears the designation or mark shall be responsible for determining that the grain has been inspected or weighed by official personnel and qualifies for the official grade designation or mark.

(4) *Grain for which representations have been made.* Any person who makes a representation that (i) grain has been officially inspected or weighed; or (ii) grain has been officially inspected or weighed and found to be of a particular kind, class, quality, condition, or weight; or (iii) particular facts have been established with respect to the grain by official inspection or weighing, shall be responsible for determining that the representation is true and is not in violation of the Act and regulations.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

### § 800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to § 800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade, official aflatoxin test results if required under the Act and the regulations, and/or the Class X weight of the grain shall be considered to be in compliance with inspection and weighing requirements under the Act for export grain.

(b) *Promptly furnished.* Export certificates shall be considered promptly furnished if they are forwarded by the shipper or the shipper's agent to the consignee not later than 10 business days after issuance.

[50 FR 49668, Dec. 4, 1985, as amended at 57 FR 2439, Jan. 22, 1992]

### § 800.17 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.18, sacked export grain shall be (1) officially inspected on the basis of official samples obtained with an approved sampling device and operated in accordance with instructions, (2) Class X weighed or checkweighed, and (3) officially checkloaded by official personnel at the time the grain is loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Services at time of loading.* When official sampling, official inspection, Class X weighing or checkweighing, and checkloading of sacked export grain loaded aboard an export carrier is performed at one location and time, official export inspection and weight certificate(s) which identify the export carrier shall be issued.

(c) *Services prior to loading.* When official sampling, official inspection, and Class X weighing or checkweighing of sacked export grain is performed prior to the date of loading aboard an export carrier, official ''OUT'' certificates shall be issued. An examination by official personnel for condition and checkloading of the grain shall be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading shows that the identity or quantity of the grain has not changed or the condition of the grain has not changed beyond expected variations prescribed in the instruction, official export inspection and weight certificates shall be issued on the basis of the official ''OUT'' certificates and the checkloading. If the identity, quantity, or the condition has changed, official export inspection and weight certificates shall be issued on the basis of the most representative

samples, including weight samples, obtained at the time the grain is loaded aboard the export carrier.

[50 FR 49668, Dec. 4, 1985]

### § 800.18 Waivers of the official inspection and Class X weighing requirements.

(a) *General.* Waivers from the official inspection and Class X weighing requirements for export grain under section 5 of the Act shall be provided in accordance with this section and the Act.

(b) *Waivers*—(1) *15,000 metric-ton waiver.* Official inspection and Class X weighing requirements apply only to exporters and individual elevator operators who (i) exported 15,000 metric tons or more of grain during the preceding calendar year, or (ii) have exported 15,000 metric tons or more of grain during the current calendar year. Exporters and elevator operators who are granted a waiver by reason of this paragraph shall, as a condition of the waiver, keep such accounts, records, and memorandum to fully and correctly disclose all transactions concerning lots of all export grain shipments. In addition, the exporters or elevator operators shall notify the Service in writing of the intention to export grain under this waiver. In the case of lots waived under this provision, if such lots are required by contract to be inspected or weighed, or if the lots are represented by official inspection or weight certificates, then such certificates shall meet the requirements of section 5 of the Act.

(2) *Grain exported for seeding purposes.* Official inspection and Class X weighing requirements do not apply to grain exported for seeding purposes, provided that (i) the grain is (A) sold or consigned for sale and invoiced as seed; and (B) identified as seed for seeding purposes on the Shipper's Export Declaration; and (ii) records pertaining to these shipments are made available, upon request by the Service, for review or copying purposes.

(3) *Grain shipped in bond.* Official inspection and weighing requirements do not apply to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with applicable regulations of the United States Customs Service (19 CFR part 18).

(4) *Grain exported by rail or truck to Canada or Mexico.* Inspection and weighing requirements do not apply to grain exported by rail or truck from the United States to Canada or Mexico.

(5) *Grain not sold by grade.* Official inspection requirements may be waived by the Service on a shipment-by-shipment basis for export grain not sold, offered for sale, or consigned for sale by official grade if (i) the contract and any amendments clearly show that the buyer and seller mutually agree to ship the grain without official inspection and (ii) a copy of the contract and any amendments is furnished in advance of loading, along with a completed application on a form prescribed by the Service.

(6) *Service not available.* Upon request, any required official inspection or Class X weighing of grain may be waived on a shipment-by-shipment basis if (i) official personnel are not and will not be available within a 24-hour period to perform needed inspection or weighing services and (ii) both the buyer and seller of the grain are made aware that the grain has not been officially inspected or Class X weighed.

(7) *Emergency waiver.* Upon request, the requirements for official inspection or Class X weighing may be waived whenever the Service determines (i) that an emergency exists that precludes official inspection or Class X weighing and (ii) that granting an emergency waiver will not impair the objectives of the Act. To qualify for an emergency waiver, the exporter or elevator operator shall make timely application and comply with all conditions which may be required by the Service.

(8) High Quality Specialty Grain Shipped in Containers. Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments shall be made available to the Service upon request, for review or

copying. These records shall be maintained for a period of 3 years. This waiver expires July 31, 2010.

(Approved by the Office of Management and Budget under control number 0580–0011)

[50 FR 49669, Dec. 4, 1985, as amended at 70 FR 21923, Apr. 28, 2005; 70 FR 73559, Dec. 13, 2005]

RECORDKEEPING AND ACCESS TO FACILITIES

### § 800.25 Required elevator and merchandising records.

(a) *Elevator and merchandiser recordkeeping.* Every person and every State or political subdivision of a State that owns or operates an elevator and every merchandiser that has obtained or obtains official inspection or official weighing services other than (1) submitted sample inspection service, or (2) official sampling service, or (3) official stowage examination service shall keep such accounts, records, and memoranda that fully and correctly disclose all transactions concerning the lots of grain for which the elevator or merchandiser received official services, except as provided under § 800.18.

(b) *Retention period.* Records specified in this section may be disposed of after a period of 3 years from the date of the official service; provided, the 3-year period may be extended if the elevator owner or operator, or merchandiser is notified in writing by the Administrator that specific records should be retained for a longer period for effective administration and enforcement of the Act. This requirement does not restrict or modify the requirements of any other Federal, State, or local statute concerning recordkeeping.

(Approved by the Office of Management and Budget under control number 0580–0011)

[51 FR 1768, Jan. 15, 1986]

### § 800.26 Access to records and facilities.

(a) *Inspection of records and facilities.* Prior to the examination of records or inspection of facilities by an authorized representative of the Secretary or the Administrator, the authorized representative shall contact or otherwise notify the elevator manager or manager's representative of their presence and furnish proof of identity and authority. While in the elevator, the authorized representative shall abide by the safety regulations in effect at the elevator. Every elevator owner and operator and every merchandiser shall permit authorized representatives of the Secretary or Administrator to enter its place of business during normal business hours and have access to the facilities and to inspect any books, documents, papers, and records that are maintained by such persons. Such access and inspection will be to effectuate the purpose, provisions, and objectives of the Act and to assure the integrity of official services under the Act or of any official transaction with which the Act is concerned. All copies of such records will be made at the Service's expense. Reasonable accommodations shall be made available to the duly authorized representative by elevator owners and operators, and merchandisers for such examination of records.

(b) *Disclosure of business information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the elevator operator or merchandiser concerned, divulge or make known in any manner, any facts or information acquired pursuant to the Act and regulations except as authorized by the Administrator, by a court of competent jurisdiction, or otherwise by law.

[51 FR 1768, Jan. 15, 1986]

REGISTRATION

### § 800.30 Foreign commerce grain business.

''Foreign commerce grain business'' is defined as the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting grain for sale in foreign commerce. This provision shall not include:

(a) Any person who only incidentally or occasionally buys for sale, or handles, weighs, or transports grain for sale and is not engaged in the regular business of buying grain for sale, or handling, weighing, or transporting grain for sale;

(b) Any producer of grain who only incidentally or occasionally sells or

transports grain which the producer has purchased;

(c) Any person who transports grain for hire and does not own a financial interest in such grain; or

(d) Any person who buys grain for feeding or processing and not for the purpose of reselling and only incidentally or occasionally sells such grain as grain.

[48 FR 44455, Sept. 29, 1983]

### § 800.31 Who must register.

Each person who has engaged in foreign commerce grain business totaling 15,000 or more metric tons during the preceding or current calendar year must register with the Service and shall be deemed to be regularly engaged in foreign commerce grain business. This includes foreign-based firms operating in the United States but does not include foreign governments or their agents. The Service will, upon request, register persons not required to register under this section if they comply with the requirements of §§ 800.33 and 800.34.

(Approved by the Office of Management and Budget under control number 0580–0012)

[48 FR 44453 and 44455, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

### § 800.32 When to register.

A person shall submit an application for registration to the Service at least 30 calendar days before regularly engaging in foreign commerce grain business according to § 800.31. For good cause shown, the Service may waive this 30-day requirement.

(Approved by the Office of Management and Budget under control number 0580–0012)

[48 FR 44453 and 44455, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

### § 800.33 How to register.

Any person who is required or desires to register must submit an application for registration to the Service. Application forms can be obtained from the Service. Each application shall: (a) Be typewritten or legibly written in English; (b) include all information required by the application form; and (c) be signed by the applicant. The information required by this paragraph may be submitted to the Service via telephone, subject to written confirmation. An applicant shall furnish any additional information requested by the Service for consideration of the application.

(Approved by the Office of Management and Budget under control number 0580–0012)

[48 FR 44453 and 44456, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

### § 800.34 Registration fee.

An applicant shall submit the registration fee prescribed in § 800.71 with the completed application. If an application is dismissed, the fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a person is registered and the registration is subsequently suspended or revoked under § 800.39.

[48 FR 44456, Sept. 29, 1983]

### § 800.35 Review of applications.

(a) The Service shall review each application to determine if it complies with §§ 800.32, 800.33, and 800.34. If the application complies and the fee has been paid, the applicant shall be registered.

(b) If the application does not comply with §§ 800.32, 800.33, and 800.34 and the omitted information prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, the application may be dismissed. The Service shall promptly notify the applicant, in writing, of the reasons for the dismissal.

[48 FR 44456, Sept. 29, 1983]

### § 800.36 Certificates of registration.

The Service shall furnish the applicant with an original and three copies of the registration certificate. The registration shall be effective on the issue date shown on the certificate. Each certificate of registration is issued on the condition that the registrant will comply with all provisions of the Act, regulations, and instructions. The Service shall charge a fee, in accordance with § 800.71, for each additional

copy of a certificate of registration requested by a registrant.

[48 FR 44456, Sept. 29, 1983]

### § 800.37 Notice of change in information.

Each registrant shall notify the Service within 30 days of any change in the information contained in the application for registration. If the notice is submitted orally, it shall be promptly confirmed in writing.

(Approved by the Office of Management and Budget under control number 0580–0012)

[48 FR 44453 and 44456, Sept. 29, 1983, as amended at 54 FR 5924, Feb. 7, 1989]

### § 800.38 Termination and renewal of registration.

Each certificate of registration shall terminate on December 31 of the calendar year for which it is issued. The Service shall send a letter to each registrant notifying the registrant of the impending termination of the registration and providing instructions for requesting renewal. The registration may be renewed in accordance with §§ 800.33 and 800.34. Failure to receive the letter shall not exempt registrants from the responsibility of renewing their registration if required by § 800.31.

[48 FR 44456, Sept. 29, 1983]

### § 800.39 Suspension or revocation of registration for cause.

(a) *General.* Registration is subject to suspension or revocation whenever the Administrator determines that the registrant has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure.* Before the Service suspends or revokes a registration, the registrant (hereinafter the ''respondent''): (1) Shall be notified of the proposed action and the reasons therefor and (2) shall be afforded opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, 1.130 through 1.151). Prior to formal adjudicatory proceedings, the Service may allow the respondent to express views on the action proposed by the Service in an informal conference before the Administrator. If the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

[48 FR 44456, Sept. 29, 1983]

## CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

### § 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.118 when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to §§ 800.125 through 800.129 and §§ 800.135 through 800.139.

(c) *Proof of authorization.* If an application for official services is filed by a person representing the applicant, the agency or the field office receiving the application may require written proof of the authority to file the application.

(Approved by the Office of Management and Budget under control number 0580–0012)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30913, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985; 54 FR 5924, Feb. 7, 1989]

### § 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* In submitting a request for official services, the applicant and the owner of the grain consent to the special and general requirements specified in paragraphs (b) and (c) of this section. These requirements are essential to carry out the purposes or provisions of the Act.

(b) *General requirements*—(1) *Access to grain.* Grain on which official services are to be performed shall, except as provided in §§ 800.85, 800.86, 800.98, and

800.99, be made accessible by the applicant for the performance of the requested official service and related monitoring and supervision activities. For the purposes of this section, grain is not ''accessible'' if it is offered for official services (i) in containers or carriers that are closed and cannot, with reasonable effort, be opened by or for official personnel; (ii) when any portion is located so as to prohibit the securing or a representative sample; or (iii) under conditions prescribed in the instructions as being hazardous to the health or safety of official personnel.

(2) *Working space.* When official services are performed at an elevator, adequate and separate space must be provided by the applicant for the performance of the requested service and related monitoring and supervision activities. Space will be ''adequate'' if it meets the space, location, and safety requirements specified in the instructions.

(3) *Notice of changes.* The operator of each facility at which official services are performed must notify the appropriate agency or field office promptly, in full detail, of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator that could or would affect the proper performance of official services.

(4) *Loading and unloading conditions.* As applicable, each applicant for official services must provide or arrange for suitable conditions in the (i) loading and unloading areas and the truck and railroad holding areas; (ii) gallery and other grain-conveying areas; (iii) elevator legs, distributor, and spout areas; (iv) pier or dock areas; (v) deck and stowage areas in the carrier; and (vi) equipment used in loading or unloading and handling the grain. Suitable conditions are those which will facilitate accurate inspection and weighing, maintain the quantity and the quality of the grain that is to be officially inspected or weighed, and not be hazardous to the health and safety of official personnel, as prescribed in the instructions.

(5) *Timely arrangements.* Requests for official service shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph, ''timely manner'' shall mean not later than 2 p.m., local time, of the preceding business day.

(6) *Observation of activities.* Each applicant for official services must provide any interested person, or their agent, an opportunity to observe sampling, inspection, weighing, and loading or unloading of grain. Appropriate observation areas shall be mutually defined by the Service and facility operator. The areas shall be safe and shall afford a clear and unobstructed view of the performance of the activity, but shall not permit a close over-the-shoulder type of observation by the interested person.

(7) *Payment of bills.* Each applicant, for services under the Act, must pay bills for the services according to §§ 800.70 through 800.73.

(8) *Written confirmations.* When requested by the agency or field office, verbal requests for official services shall be confirmed in writing. Each written request shall be signed by the applicant, or the applicant's agent, and shall show or be accompanied by the following information: (i) The identification, quantity, and specific location of the grain; (ii) the name and mailing address of the applicant; (iii) the kind and scope of services desired; and (iv) any other information requested by the agency or field office.

(9) *Names and addresses of interested persons.* When requested, each applicant for official services shall show on the application form the name and address of each known interested person.

(10) *Surrender of superseded certificates.* When a request for official service results in a certificate being superseded, the superseded certificate must be promptly surrendered.

(11) *Recordkeeping and access.* Each applicant for official services must comply with applicable recordkeeping and access-to-facility provisions in §§ 800.25 and 800.26.

(12) *Monitoring equipment.* Owners and operators of elevators shall, upon a finding of need by the Administrator, provide equipment necesary for the monitoring by official personnel of grain loading, unloading, handling, sampling, weighing, inspection, and related activities. The finding of need

will be based primarily on a consideration of manpower and efficiency.

(c) *Special requirements for official Class X and Class Y weighing services*—(1) *General.* Weighing services shall be provided only at weighing facilities which have met the conditions, duties, and responsibilities specified in section 7A(f) of the Act and this section of the regulations. Weighing services will be available only in accordance with the requirements of § 800.115. Facilities desiring weighing services should contact the Service in advance to allow the Service time to determine if the facility complies with the provisions of the Act and regulations.

(2) *Conditions.* The facility shall provide the following information annually to the Service: (i) The facility owner's name and address; (ii) the facility operator's name and address; (iii) the name of each individual employed by the facility as a weigher and a statement that each individual: (A) Has a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv) a blueprint or similar drawing of the facility showing the location of: (A) The loading, unloading, and grain handling systems; (B) the scale systems used or to be used in weighing grain; and (C) the bins and other storage areas; (v) the identification of each scale in the facility that is to be used for weighing grain under the Act; (vi) the following information regarding automated data processing systems: (A) Overall system intent, design, and layout; (B) make, model, and technical specifications of all hardware; (C) description of software, language used, and flow charts of all programs, subprograms, routines, and subroutines; and (D) complete operating instructions; and (vii) any other information deemed necessary to carry out the provisions of the Act.

If a facility has, or plans to have, an automated data processing system which is used in conjunction with any portion of the scale system, grain handling system, or the preparing or printing of official weight certificates, the facility shall make available to the Service sufficient documentation to ensure that the system cannot be used deceptively or otherwise provide inaccurate information. The Service or approved scale testing and certification organization shall conduct an onsite review to evaluate the performance and accuracy of each scale that will be used for weighing grain under the Act, and the performance of the grain loading, unloading, and related grain handling equipment and systems.

(3) *Duties and responsibilities of weighing facilities requesting official services.* (i) *Providing official services.* Upon request, each weighing facility shall permit official weighing services to be performed promptly.

(ii) *Supervision.* Each weighing facility shall supervise its employees and shall take action necessary to assure that employees are performing their duties according to the Act, regulations, and instructions and are not performing prohibited functions or are not involved in any action prohibited by the Act, regulations, and instructions.

(iii) *Facilities and equipment.* (A) *General.* Each weighing facility shall obtain and maintain facilities and equipment which the Service determines are needed for weighing services performed at the facility. Each facility shall operate and shall maintain each scale system and related grain handling system used in weighing according to instructions issued by the manufacturer and by the Service. A scale log book for each approved scale used for official weighing services shall be maintained according to instructions at each weighing facility.

(B) *Malfunction of scales.* Scales or scale systems that are operating in other than a correct and approved manner shall not be used for weighing grain under the Act. Before the malfunctioning scale or scale system can be used again for weighing grain under the Act, it shall be repaired and determined to be operating properly by the Service or approved scale testing and certification organization.

(iv) *Oral directives.* FGIS oral directives issued to elevator personnel shall be confirmed in writing upon request by elevator management. Whenever practicable, the Service shall issue oral

directives through elevator management officials.

(Approved by the Office of Management and Budget under control number 0580–0012)

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 49 FR 49587, Dec. 21, 1984; 50 FR 45392, Oct. 31, 1985; 54 FR 5924, Feb. 7, 1989]

### § 800.47 Withdrawal of request for official services.

An applicant may withdraw a request for official services any time before official personnel release results, either verbally or in writing. See § 800.51 for reimbursement of expenses, if any.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

### § 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal*—(1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.76 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

(2) *Original services.* A request for original services shall be dismissed if a reinspection, review of weighing, appeal inspection, or Board appeal inspection has been performed on the same lot at the same specified service point within 5 business days.

(3) *Reinspection, appeal inspection, or Board appeal inspection services.* A request for a reinspection, appeal inspection, or Board appeal inspection service shall be dismissed when: (i) The kind and scope are different from the kind and scope of the last inspection service; (ii) the condition of the grain has undergone a material change; (iii) the request specifies a representative file sample and a representative file sample is not available, (iv) the applicant requests that a new sample be obtained and a new sample cannot be obtained; or (v) the service cannot be performed within 5 business days of the date of the last inspection date.

(4) *Review of weighing services.* A request for review of weighing services shall be dismissed when the request (i) is filed before the weighing results have been released, or (ii) is filed more than 90 calendar days after the date of the original service.

(b) *Procedure for dismissal.* When an agency or the Service proposes to dismiss a request for official services, the applicant shall be notified of the proposed action. The applicant will then be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified again of the decision to dismiss the request for service, and any results of official services shall not be released.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 45392, Oct. 31, 1985]

### § 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* An agency or the Service shall conditionally withhold requests for official services when an applicant fails to meet any requirement prescribed in § 800.46.

(b) *Procedure and withholding.* When an agency or the Service proposes to conditionally withhold official services, the applicant shall be notified of the reason for the proposed action. The applicant will then be afforded reasonable time to take corrective action or to show that there is no basis for withholding services. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified. Any results of official services shall not be released when a request for service is withheld.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

**§ 800.50 Refusal of official services and civil penalties.**

(a) *Grounds for refusal.* Any or all services available to an applicant under the Act may be refused, either temporarily or indefinitely, by the Service for causes prescribed in section 10(a) of the Act. Such refusal by the Service may be restricted to the particular facility or applicant (if not a facility) found in violation or to a particular type of service, as the facts may warrant. Such action may be in addition to, or in lieu of, criminal penalties or other remedial action authorized by the Act.

(b) *Provision and procedure for summary refusal.* The Service may, without first affording the applicant (hereafter in this section ''respondent'') a hearing, refuse to provide official inspection and Class X or Y weighing services pending final determination of the proceeding whenever the Service has reason to believe there is cause, as prescribed in section 10 of the Act, for refusing such official services and considers such action to be in the best interest of the official services system under the Act: *Provided that* within 7 days after refusal of such service, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c)(2) of this section. Pending final determination, the Service may terminate the temporary refusal if alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(c) *Procedure for other than summary refusal.* Except as provided in paragraph (b) of this section, before the Service refuses to provide official services the respondent shall be (1) notified of the services that are to be refused, the locations at which and the time period for which service will be refused, and the reasons for the refusal; and (2) afforded an opportunity for a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 *et seq.*). At the discretion of the Service, prior to initiation of formal adjudicatory proceedings, the respondent may be given an opportunity to express his or her views on the action proposed by the Service in an informal conference before the Administrator of the Service. If, as a result of such an informal conference, the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

(d) *Assessment of civil penalties.* Any person who has knowingly committed any violation of section 13 of the Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain may be assessed a civil penalty not to exceed $75,000 for each such violation as the Administrator determines is appropriate to effect compliance with the Act. Such action may be in addition to, or in lieu of, criminal penalties under section 14 of the Act, or in addition to, or in lieu of, the refusal of official services authorized by the Act.

(e) *Provisions for civil penalty hearings.* Before a civil penalty is assessed against any person, such person shall be afforded an opportunity for a hearing as provided under paragraph (c)(2) of this section.

(f) *Collection of civil penalties.* Upon failure to pay the civil penalty, the Service may request the Attorney General to file civil action to collect the penalty in a court of appropriate jurisdiction.

[45 FR 15810, Mar. 11, 1980, as amended at 51 FR 12830, Apr. 16, 1986]

**§ 800.51 Expenses of agency, field office, or Board of Appeals and Review.**

For any request that has been dismissed or withdrawn under § 800.47, § 800.48, or § 800.49, respectively, each applicant shall pay expenses incurred by the agency or the Service.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

**§ 800.52 Official services not to be denied.**

Subject to the provisions of §§ 800.48, 800.49, and 800.50, no person entitled to official services under the Act shall be denied or deprived of the right thereto

by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization; or by any contract, agreement, or other understanding.

DESCRIPTIONS

### § 800.55 Descriptions by grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors. An official grade designation contains any of the following: The term ''U.S.,'' the numerals 1 through 5, the term ''Sample grade,'' or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

[50 FR 9982, Mar. 13, 1985]

### § 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) The use of an official grade designation, with or without factor information, or of official criteria information, or of the term ''official grain standards,'' shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks ''official certificate;'' ''officially inspected;'' ''official inspection;'' ''officially weighed;'' ''official weight;'' and ''official weighing'' shall not be considered to be a representation of official service under the Act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark ''officially tested'' with respect to grain inspection and weighing equipment shall not be considered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

[50 FR 9982, Mar. 13, 1985]

GRAIN HANDLING PRACTICES

### § 800.60 Deceptive actions and practices.

In the absence of prior adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain that knowingly causes or is an attempt to cause the issuance by official personnel of a false or incorrect official certificate or other official form, is deemed to be deceptive and, as such, is a violation of section 13(a)(3) of the Act. For the purposes of this paragraph, adequate notice is written or

oral notice given to an agency or the Service, as applicable, before official personnel begin to perform official inspection or weighing services. If oral notice is given, it must be confirmed in writing within 2 business days. To be adequate, the notice must explain the nature and extent of the action or practice in question and must identify the grain, stowage container, equipment, facility, and the official personnel actually or potentially involved.

(Approved by the Office of Management and Budget under control number 0580–0011)

[48 FR 17330, Apr. 22, 1983, as amended at 48 FR 44453, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

### § 800.61 Prohibited grain handling practices.

(a) *Definitions.* For the purpose of this section, dockage and foreign material in grain shall be:

(1) Defined for export elevators at export port locations as set forth in 7 CFR part 810 and as dust removed from grain and collected in a bin/container and as dust settling on floors, equipment, and other areas, commonly referred to as dust sweepings; and

(2) Defined for other than export elevators as set forth in 7 CFR part 810.

(b) *Prohibited practices.* Except as permitted in paragraphs (c) and (d) of this section, no person shall:

(1) Recombine or add dockage or foreign material to any grain, or

(2) Blend different kinds of grain except when such blending will result in grain being designated as Mixed grain in accordance with subpart E of the Official United States Standards for Grain.

(3) Add water to grain for purposes other than milling, malting, or similar processing operations.

(c) *Exemption.* (1) The Administrator may grant exemptions from paragraph (b) of this section for grain shipments sent directly to a domestic end-user or processor. Requests for exemptions shall be submitted by grain handlers to the Service through the domestic end-users or processors or their representatives.

(2) Grain sold under an exemption shall be consumed or processed into a product(s) by the purchaser and not resold into the grain market.

(3) Products or byproducts from grain sold under an exemption shall not be blended with or added to grain in commercial channels, except for vegetable oil which may be used as a dust suppressant in accordance with (d)(4) of this section.

(d) *Exceptions.* Paragraph (b) shall not be construed as prohibiting the following grain handling practices. Compliance with paragraphs (d)(1) through (d)(6) of this section does not excuse compliance with applicable Federal, State, and local laws.

(1) *Blending.* Grain of the same kind, as defined by the Official United States Standards for Grain, may be blended to adjust quality. Broken corn or broken kernels may be recombined or added to whole grain of the same kind provided that no foreign material or dockage has been added to the broken corn or broken kernels.

(2) *Insect and fungi control.* Grain may be treated to control insects and fungi. Elevators, other grain handlers, and their agents are responsible for the proper use and applications of insecticides and fungicides. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(3) *Marketing dockage and foreign material.* Dockage and foreign material may be marketed separately.

(4) *Dust suppressants.* Grain may be treated with an additive, other than water, to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the proper use and application of dust suppressants. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(5) *Identification.* Confetti or similar material may be added to grain for identification purposes. Elevators, other grain handlers, and their agents are responsible for the proper use and application of such materials. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected or weighed.

(6) *Export loading facilities.* Between May 1, 1987, and December 31, 1987, export elevators at export port locations

may recombine dockage and foreign material, but not dust, with grain provided such recombination occurs during the loading of a vessel with the intended purpose of ensuring uniformity of dockage and foreign material in the cargo.

(Approved by the Office of Management and Budget under control number 0580–0011)

[52 FR 24437, June 30, 1987, as amended at 59 FR 52077, Oct. 14, 1994]

FEES

### § 800.70 Fees for official services performed by agencies.

(a) *Assessment and use of fees.* (1) Fees assessed by an agency for official inspection and Class X or Class Y weighing services or testing of inspection equipment shall be reasonable and nondiscriminatory.

(2) In the case of a State or local governmental agency, fees shall not be used for any purpose other than to finance the cost of the official inspection and Class X or Class Y weighing service and inspection equipment testing service performed by the agency or the cost of other closely related programs administered by the agency.

(b) *Approval required*—(1) *Restriction.* Only fees that meet the requirements stated in this section and are approved by the Service as reasonable and nondiscriminatory may be charged by an agency.

(2) *Exceptions.* For good cause shown by an agency, the Administrator may grant case-by-case exceptions to the requirements in this section, provided that a determination is made that the agency fees would be reasonable and nondiscriminatory.

(c) *Reasonable fees.* In determining if an agency's fees are reasonable, the Service will consider whether the fees: (1) Cover the estimated total cost to the agency of (i) official inspection services, (ii) Class X or Class Y weighing services, (iii) inspection equipment testing services, and (iv) related supervision and monitoring activities performed by the agency; (2) Are reasonably consistent with fees assessed by adjacent agencies for similar services; (3) Are assessed on the basis of the average cost of performing the same or similar services at all locations served by the agency; and (4) Are supported by sufficient information which shows how the fees were developed.

(d) *Nondiscriminatory fees.* In determining if fees are nondiscriminatory, the Service will consider whether the fees are collected from all applicants for official service in accordance with the approved fee schedule. Charges for time and travel incurred in providing service at a location away from a specified service point shall be assessed in accordance with the approved fee schedule.

(e) *Schedule of fees to be established.* (1) Each agency shall establish a schedule of fees for official services which the agency is delegated or designated the authority to perform. The schedule shall be in a standard format in accordance with the instructions. Such schedules may include fees for nonofficial services provided by the agency, but they shall be clearly identified and will not be subject to approval by the Service.

(2) The schedule shall be published and made available by the agency to all users of its services.

(f) *Request for approval of fees*—(1) *Time requirement.* A request for approval of a new or revised fee shall be submitted to the Service not less than 60 days in advance of the proposed effective date for the fee. Failure to submit a request within the prescribed time period may be considered grounds for postponment or denial of the request.

(2) *Contents of request.* Each request shall show (i) the present fee, if any, and the proposed fee, together with data showing in detail how the fee was developed, and (ii) the proposed effective date.

(g) *Review of request*—(1) *Approval action.* If upon review the Service finds that the request and supporting data justify the new or revised fee, the request will be marked ''approved'' and returned to the agency.

(2) *Denial action.* If the Service finds that the request and supporting data do not justify the new or revised fee, approval of the request will be withheld pending receipt of any additional supporting data which the agency has to offer. If the data are not submitted within a reasonable period, the request

shall be denied. In the case of a denial of a request, the agency shall be notified of the reason for denial.

(Approved by the Office of Management and Budget under control numbers 0580–0003 and 0580–0012)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 50 FR 30131, July 24, 1985]

### § 800.71 Fees assessed by the Service.

(a) *Official inspection and weighing services.* The fees shown in schedules A and B apply to official inspection and weighing services performed by FGIS in the United States and Canada. The fees shown in schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that have been delegated additional responsibilities by FGIS. These States shall be assessed fees as set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay prescribed fees within 30 days after being due, shall result in automatic termination of the delegation or designation. The delegation or designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination are paid within 60 days of the termination.

SCHEDULE A—FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED IN THE UNITED STATES

TABLE 1—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

| | Monday to Friday (6 a.m. to 6 p.m.) | Monday to Friday (6 p.m. to 6 a.m.) | Saturday, Sunday, and overtime [2] | Holidays |
|---|---|---|---|---|
| (1) Inspection and Weighing Services Hourly Rates (per service representative): | | | | |
| 1-year contract ($ per hour) | 36.00 | 37.60 | 43.00 | 64.00 |
| Noncontract ($ per hour) | 64.00 | 64.00 | 64.00 | 64.00 |
| (2) Additional Tests (cost per test, assessed in addition to the hourly rate): [3] | | | | |
| (i) Aflatoxin (rapid test kit method) | $10.00 | | | |
| (ii) NIR or NMR Analysis (protein, oil, starch, etc.) | 2.25 | | | |
| (iii) Vomitoxin (qualitative) | 12.50 | | | |
| (iv) Vomitoxin (quantitative) | 18.50 | | | |
| (v) Waxy corn (per test) | 2.25 | | | |
| (vi) Fees for other tests not listed above will be based on the lowest noncontract hourly rate | ..... | | | |
| (vii) Other services | ..... | | | |
| (a) Class Y Weighing (per carrier) | ..... | | | |
| (1) Truck/container | 0.30 | | | |
| (2) Railcar | 1.25 | | | |
| (3) Barge | 2.50 | | | |
| (3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier): | | | | |
| (i) All outbound carriers serviced by the specific field office (per-metric ton): | | | | |
| (a) League City | 0.167 | | | |
| (b) New Orleans | 0.067 | | | |
| (c) Portland | 0.136 | | | |
| (d) Toledo | 0.184 | | | |

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]

| | |
|---|---|
| (1) Original Inspection and Weighing (Class X) Services | |
| (i) Sampling only (use hourly rates from Table 1) | |
| (ii) Stationary lots (sampling, grade/factor, & checkloading): | |
| (a) Truck/trailer/container (per carrier) | $20.00 |
| (b) Railcar (per carrier) | 29.70 |
| (c) Barge (per carrier) | 187.50 |
| (d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) | 0.04 |
| (iii) Lots sampled online during loading (sampling charge under (i) above, plus): | |
| (a) Truck/trailer container (per carrier) | 12.00 |
| (b) Railcar (per carrier) | 25.00 |
| (c) Barge (per carrier) | 128.10 |
| (d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) | 0.04 |
| (iv) Other services | |
| (a) Submitted sample (per sample—grade and factor) | 12.00 |
| (b) Warehouseman inspection (per sample) | 21.00 |
| (c) Factor only (per factor—maximum 2 factors) | 5.70 |
| (d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT) | 0.04 |
| (e) Reinspection (grade and factor only. Sampling service additional, item (i) above) | 13.00 |
| (f) Class X Weighing (per hour pre service representative) | 64.00 |
| (v) Additional tests (excludes sampling): | |
| (a) Aflatoxin (rapid test kit method) | $30.00 |
| (b) NIR or NMR Analysis (protein, oil, starch, etc.) | 10.00 |
| (c) Vomitoxin (qualitative) | 31.00 |
| (d) Vomitoxin (quantitative) | 38.50 |
| (e) Waxy corn (per test) | 10.00 |
| (f) Canola (per test__00 dip test) | 10.00 |
| (g) Pesticide Residue Testing: [3] | |
| (1) Routine Compounds (per sample) | 216.00 |
| (2) Special Compounds (per hour per service representative) | 115.00 |
| (h) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1. | |
| (2) Appeal inspection and review of weighing service.[4] | |
| (i) Board Appeals and Appeals (grade and factor) | 82.00 |
| (a) Factor only (per factor—max 2 factors) | 43.00 |
| (b) Sampling service for Appeals additional (hourly rates from Table 1) | |
| (ii) Additional tests (assessed in addition to all other applicable tests): | |
| (a) Aflatoxin (rapid test kit method) | $30.00 |
| (b) NIR or NMR Analysis (protein, oil, starch, etc.) | 17.70 |
| (c) Vomitoxin (per test-qualitative) | 41.00 |
| (d) Vomitoxin (per test-quantitative) | 47.00 |
| (e) Vomitoxin (per test-HPLC Board Appeal) | 141.00 |
| (f) Pesticide Residue Testing: [3] | |
| (1) Routine Compounds (per sample) | 216.00 |
| (2) Special Compounds (per hour per service representative) | 115.00 |
| (g) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1. | |
| (iii) Review of weighing (per hour per service representative) | 82.60 |

TABLE 2—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]—Continued

| | |
|---|---|
| (3) Stowage examination (service-on-request): [3] | |
| (i) Ship (per stowage space) (minimum $255.00 per ship) | 51.00 |
| (ii) Subsequent ship examinations (same as original) (minimum $153.00 per ship). | |
| (iii) Barge (per examination) | 41.00 |
| (iv) All other carriers (per examination) | 16.00 |

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3—MISCELLANEOUS SERVICES [1]

| | |
|---|---|
| (1) Grain grading seminars (per hour per service representative) [2] | $64.00 |
| (2) Certification of diverter-type mechanical samplers (per hour per service representative) [2] | 64.00 |
| (3) Special weighing services (per hour per service representative): [2] | |
| (i) Scale testing and certification | 83.20 |
| (ii) Scale testing and certification of railroad track scales | 83.20 |
| (iii) Evaluation of weighing and material handling systems | 83.20 |
| (iv) NTEP Prototype evaluation (other than Railroad Track Scales) | 83.20 |
| (v) NTEP Prototype evaluation of Railroad Track Scale | 83.20 |
| (vi) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.) | 500.00 |
| (vii) Mass standards calibration and reverification | 83.20 |
| (viii) Special projects | 83.20 |
| (4) Foreign travel (per day per service representative) | 510.00 |
| (5) Online customized data EGIS service: | |
| (i) One data file per week for 1 year | 500.00 |
| (ii) One data file per month for 1 year | 300.00 |
| (6) Samples provided to interested parties (per sample) | 3.00 |
| (7) Divided-lot certificates (per certificate) | 1.75 |
| (8) Extra copies of certificates (per certificate) | 1.75 |
| (9) Faxing (per page) | 1.75 |
| (10) Special mailing (actual cost). | |
| (11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1). | |

[1] Any requested service that is not listed will be performed at $64.00 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA [1]

| Inspection and weighing service (bulk or sacked grain) | Regular workday (Monday thru Saturday) | Nonregular workday (Sunday and holiday) |
|---|---|---|
| (1) Original inspection services and official weighing services: [2,3] | | |
| (i) Contract services (per hour per service representative) | $103.00 | $130.00 |
| (ii) Noncontract service (per hour per service representative) | 137.00 | 172.00 |
| (2) Extra copies of certificates (per copy) | 3.00 | 3.00 |

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, schedule A for Board Appeal fees.

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES [1]

The supervision fee is charged at $0.011 per metric ton inspected and/or weighed.

(b) *Registration certificates and renewals.* (1) Fees for registration certificates and renewals will be based on the nature of the business:

(i) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce ..... $135.00

(ii) Firms engaged in the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce who also are in a control relationship, as defined in Section 17A(b)(2) of the Act, with respect to a business engaged in the business of buying, handling, weighing, or transporting grain for sale in interstate commerce ..... 270.00

(2) Requests for extra copies of registration certificates shall be accompanied by a fee of $2.50 for each copy.

(c) *Designation amendments.* An application for an amendment to a designation shall be accompanied by a fee of $75.00.

(d) Each application for approval to operate as a scale testing organization shall be accompanied by a fee of $250.

(Secs. 8 and 9, Pub. L. 94–582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)); secs. 9, 18, Pub. L. 94–582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e); secs. 8 and 9, Pub. L. 94–582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79a(1)), as amended by Pub. L. 97–35, 95 Stat. 371, 372)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 49 FR 26563, June 28, 1984; 50 FR 38504, Sept. 23, 1985; 51 FR 43724, Dec. 4, 1986; 53 FR 21792, June 10, 1988; 59 FR 52656, Oct. 19, 1994; 63 FR 32714, June 16, 1998; 63 FR 35504, June 30, 1998; 63 FR 70992, Dec. 23, 1998; 64 FR 6783, Feb. 11, 1999; 65 FR 16785, Mar. 30, 2000; 66 FR 35753, July 9, 2001; 66 FR 36834, July 13, 2001; 67 FR 13086, Mar. 21, 2002; 68 FR 32625, June 2, 2003; 68 FR 35490, June 13, 2003; 69 FR 26487, May 13, 2004; 70 FR 50151, Aug. 26, 2005; 71 FR 65373, Nov. 8, 2006]

## § 800.72 Explanation of additional service fees for services performed in the United States only.

(a) When transportation of the service representative to the service location (at other than a specified duty point) is more than 25 miles from an FGIS office, the actual transportation cost in addition to the applicable hourly rate for each service representative will be assessed from the FGIS office to the service point and return. When commercial modes of transportation (e.g., airplanes) are required, the actual expense incurred for the round-trip travel will be assessed. When services are provided to more than one applicant, the travel and other related charges will be prorated between applicants.

(b) In addition to a 2-hour minimum charge for service on Saturdays, Sundays, and holidays, an additional charge will be assessed when the revenue from the services in § 800.71, schedule A, table 2, does not equal or exceed what would have been collected at the applicable hourly rate. The additional charge will be the difference between the actual unit fee revenue and the hourly fee revenue. Hours accrued

for travel and standby time shall apply in determining the hours for the minimum fee.

[61 FR 43305, Aug. 22, 1996]

### § 800.73 Computation and payment of service fees; general fee information.

(a) *Computing hourly rates.* The applicable hourly rate will be assessed in quarter hour increments for:

(1) Travel from the FGIS field office or assigned duty station to the service point and return;

(2) The performance of the requested service, less mealtime.

(b) *Application of fees when service is delayed or dismissed by the applicant.* The applicable hourly rate will be assessed for the entire period of scheduled service when:

(1) Service has been requested at a specified location;

(2) A service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service; and

(3 FGIS officials determine that the service representative cannot be utilized to provide service elsewhere without cost to the Service.

(c) *Application of fees when an application for service is withdrawn or dismissed.* The applicable hourly rate will be assessed to the applicant for the entire period of scheduled service if the request is withdrawn or dismissed after the service representative departs for the service point, or if the service request is not canceled by 2 p.m., local time, the business day preceding the date of scheduled service. However, the applicable hourly rate will not be assessed to the applicant if FGIS officials determine that the service representative can be utilized elsewhere or released without cost to the Service.

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by service representatives, including additional fees as provided in § 800.72, shall be assessed to and paid by the applicant for the service.

(e) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(f) *Form of payment.* Bills for fees assessed under the regulations in this part for official services performed by FGIS shall be paid by check, draft, or money order, payable to the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration.

[61 FR 43305, Aug. 22, 1996, as amended at 69 FR 26490, May 13, 2004]

KINDS OF OFFICIAL SERVICES

### § 800.75 Kinds of official inspection and weighing services.

(a) *General.* Paragraphs (b) through (m) of this section describe the kinds of official service available. Each kind of service has several levels. §§ 800.115, 800.116, 800.117, and 800.118 explain Original Services, §§ 800.125, 800.126, 800.127, 800.128, and 800.129 explain Reinspection Services and Review of Weighing Services, and §§ 800.135, 800.136, 800.137, 800.138, and 800.139 explain Appeal Inspection Services. The results of each official service listed in paragraphs (b) through (j) will be certificated according to § 800.160.

(b) *Official sample-lot inspection service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) analyzing the grain sample for grade, official factors, or official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(c) *Warehouseman's sample-lot inspection service.* This service consists of (1) a licensed warehouseman sampler (i) sampling an identified lot of grain using an approved diverter-type mechanical sampler and (ii) sending the sample to official personnel and (2) official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(d) *Submitted sample inspection service.* This service consists of an applicant or an applicant's agent submitting a grain

sample to official personnel, and official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) forwarding a representative portion(s) of the sample along with a copy of the certificate, as requested by the applicant.

(f) *Official stowage examination service.* (1) This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances, and foreign odor; and is suitable to store or carry grain.

(2) A stowage examination may be obtained as a separate service or with one or more other services. Approval of the stowage space is required for official sample-lot inspection services on all export lots of grain and all official sample-lot inspection services performed on outbound domestic lots of grain which are sampled and inspected at the time of loading. Also, approval of the stowage space is required for any weighing services performed on all outbound land carriers.

(g) *Class X weighing service.* This service consists of official personnel (1) completely supervising the loading or unloading of an identified lot of grain and (2) physically weighing or completely supervising approved weighers weighing the grain.

(h) *Class Y weighing service.* This service consists of (1) approved weighers physically weighing the grain and (2) official personnel partially or completely supervising the loading or unloading of an identified lot of grain.

(i) *Checkweighing service (sacked grain).* This service consists of official personnel or approved weighers under the supervision of official personnel (1) physically weighing a selected number of sacks from a grain lot and (2) determining the estimated total gross, tare, and new weights, or the estimated average gross or net weight per filled sack according to the regulations, instructions, and request by the applicant.

(j) *Checkloading service.* This service consists of official personnel (1) performing a stowage examination; (2) computing the number of filled grain containers loaded aboard a carrier; and (3) if practicable, sealing the carrier for security.

(k) *Test weight reverification service.* This service consists of official personnel (1) comparing the weight of elevator test weights with known weights; (2) correcting the elevator test weights, when necessary; and (3) issuing a Report of Test.

(l) *Railroad track scale testing service.* This service consists of official personnel (1) testing railroad track scales with Service-controlled test cars and (2) issuing a Report of Test.

(m) *Hopper and truck scale testing service.* This service consists of official personnel (1) testing hopper and truck scales and (2) issuing a Report of Test.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580–0011)

[50 FR 45392, Oct. 31, 1985]

## § 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

(b) *Restricted services*—(1) *Not standardized grain.* When an inspection or weighing service is requested on a sample or a lot of grain which does not meet the requirements for grain as set forth in the Official U.S. Standards for Grain, a certificate showing the words ''Not Standardized Grain'' shall be issued according to the instructions.

(2) *Grain screening.* The inspection or weighing of grain screenings may be obtained from an agency or field office according to the instructions.

[50 FR 45393, Oct. 31, 1985, as amended at 60 FR 65235, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

INSPECTION METHODS AND PROCEDURES

## § 800.80 Methods and order of performing official inspection services.

(a) *Methods*—(1) *General.* All official inspection services shall be performed in accordance with methods and procedures prescribed in the regulations and the instructions.

(2) *Lot inspection services.* A lot inspection service shall be based on a representative sampling and examination of the grain in the entire lot, except as provided in § 800.85, and an accurate analysis of the grain in the sample.

(3) *Stowage examination service.* A stowage examination service shall be based on a thorough and accurate examination of the carrier or container into which grain will be loaded.

(4) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform a complete analysis for grade. If a complete analysis for grade cannot be performed because of an inadequate sample size or other conditions, the request for service shall be dismissed or a factor only inspection may be performed upon request.

(5) *Reinspection and appeal inspection service.* A reinspection, appeal inspection, or Board appeal inspection service shall be based on an independent review of official grade information, official factor information, or other information consistent with the scope of the original inspection.

(b) *Order of service.* Official inspection services shall be performed, to the extent practicable, in the order in which they are received. Priority shall be given to inspections required for export grain. Priority may be given to other kinds of inspection services under the Act with the specific approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for inspection services shall be promptly stamped or similarly marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an official inspection service on grain or on a carrier or container in which they have a direct or indirect financial interest.

[50 FR 49669, Dec. 4, 1985]

## § 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service*—(1) *Original official sample-lot inspection service.* For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

(2) *Official sample-lot reinspection and appeal inspection service.* For an official sample-lot reinspection service or an official appeal sample-lot inspection service, the sample(s) on which the reinspection or appeal is determined shall (i) be obtained by official personnel and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the reinspection or appeal inspection is determined on the basis of official file sample(s), the samples shall meet the requirements of § 800.82(d).

(3) *New sample.* Upon request and if practicable, a new sample shall be obtained and examined as a part of a reinspection or appeal inspection. The provision for a new sample shall not apply if obtaining the new sample involves a change in method of sampling.

(b) *Representative sample.* A sample shall not be considered representative unless it (1) has been obtained by official personnel, (2) is of the size prescribed in the instructions, and (3) has been obtained, handled, and submitted in accordance with the instructions. A sample which fails to meet the requirements of this paragraph may, upon request of the applicant, be inspected as a submitted sample.

(c) *Protecting samples.* Official personnel shall protect official samples, warehouseman's samples, and submitted samples from manipulation, substitution, or improper and careless handling which may deprive the samples of their representativeness or which may change the physical or chemical properties of the grain, as appropriate, from the time of sampling or receipt until the inspection services are completed and the file samples have been discarded.

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

(e) *Disposition of samples*—(1) *Excess grain.* Any grain in excess of the quantity specified in the instructions for the requested service, the file samples, and samples requested by interested persons shall be returned to the lot from which the grain was obtained or to the owner of the lot or the owner's order.

(2) *Inspection samples.* Inspection samples, after they have served their intended purpose, shall be disposed of as follows:

(i) Samples which contain toxic substances or materials shall be kept out of food and feed channels, and

(ii) Official personnel shall dispose of samples obtained or submitted to them according to procedures established by the Service. Complete and accurate records of disposition shall be maintained.

(Approved by the Office of Management and Budget under control number 0580–0013)

[50 FR 49669, Dec. 4, 1985, as amended at 68 FR 19138, Apr. 18, 2003]

## § 800.82 Sampling provisions by level of service.

(a) *Original inspection service*—(1) *Official sample-lot inspection service.* Each original inspection service shall be performed on the basis of one or more official samples obtained by official personnel from grain in the lot and forwarded to the appropriate agency or field office.

(2) *Warehouseman's sample-lot inspection.* Each original warehouseman's sample-lot inspection service shall be performed on the basis of samples obtained by a licensed warehouseman and sent to the appropriate agency or field office in whose circuit the warehouse is located.

(3) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Reinspection, and appeal inspection services*—(1) *Official sample-lot inspection service.* Each of these inspection services shall be performed on the basis of official samples as available, including file samples, at the time the service is requested. In performing these services, a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler generally shall be used with respect to quality factors and official criteria, and a sample obtained with a probe at the time of the reinspection or appeal, generally, shall be used with respect to heating, musty, sour, insect infestation, and other condition and odor factors. In instances where original inspection results are based on samples obtained by probe, the decision as to whether file samples or new samples obtained by probe are to be used shall be made by the official personnel performing the service.

(2) *Warehouseman's sample-lot inspection service.* Each reinspection service and appeal inspection service on a warehouseman's sample shall be performed on an analysis of the official file sample.

(3) *Submitted sample service.* Each reinspection service and appeal inspection service on a submitted sample shall be performed on an analysis of the official file sample.

(c) *Board appeal inspection services.* Board appeal inspection services shall be performed on an analysis of the official file sample.

(d) *Use of file samples*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions may be considered representative for a reinspection service, appeal inspection service, and a Board appeal inspection service if (i) the file sample has remained at all times in the custody and control of the official personnel that performed the inspection service in question; and (ii) the official personnel who performed the original inspection service and those who are to perform the reinspection, the appeal inspection, or the Board appeal inspection service determine that the samples were representative at the time

the original inspection service was performed and that the quality or condition of the grain in the samples has not changed.

(2) *Certificate statement.* When the results of a reinspection, appeal inspection, or Board appeal inspection service are based on an official file sample, the certificate for the reinspection service, the appeal inspection service, and the Board appeal inspection service shall show a statement, as specified in the instructions, indicating that the results are based on the official file sample.

[50 FR 49670, Dec. 4, 1985]

### § 800.83 Sampling provisions by kind of movement.

(a) *Export cargo movements*—(1) *Bulk grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each inspection for official grade, official factor, or official criteria on an export cargo shipment of bulk grain shall be performed on official samples obtained from the grain (i) as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (except as approved by the Administrator when representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of a diverter-type mechanical sampler approved by the Service and operated in accordance with instructions. If an approved diverter-type mechanical sampler is not properly installed at an elevator or facility as required, each certificate issued at that elevator or facility for an export cargo shipment of bulk grain shall show a statement indicating the type of approved sampling method used, as prescribed in the instructions.

(2) *Sacked grain.* Each inspection for official grade, official factor, or official criteria on an export cargo shipment of sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with instructions.

(b) *Other movements.* Each inspection for official grade, official factor, or official criteria on a domestic cargo movement (''In,'' ''Out,'' or en route barge movement), a movement in a land carrier (any movement in a railcar, truck trailer, truck/trailer combination, or container), or a ''LOCAL'' movement of bulk or sacked grain shall be performed on official samples obtained from the grain by any sampling method approved by the Service and operated in accordance with the instructions.

[50 FR 49670, Dec. 4, 1985]

### § 800.84 Inspection of grain in land carriers, containers, and barges in single lots.

(a) *General.* The reinspection of bulk or sacked grain loaded or unloaded from any carrier or container, except shiplot grain, shall be conducted in accordance with the provisions in this section and procedures prescribed in the instructions.

(b) *Single and multiple grade procedure*—(1) *Single grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purpose of this paragraph, condition only includes the factors heating, musty, or sour.

(2) *Multiple grade.* When grain in a carrier or container is offered for inspection as one lot and the grain is found to be not uniform in condition because portions of the grain are heating, musty, or sour, the grain in each portion will be sampled, inspected, and graded separately; but the results shall be shown on one certificate. The certificate shall show the approximate quantity or weight of each portion, the location of each portion in the carrier or container, and the grade of the grain in each portion.

(3) *Infested.* If any portion of grain in a lot is found to be infested, according to applicable provisions of the Official U.S. Standards for Grain, the entire lot shall be considered infested. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant for inspection shall be promptly notified and given

the option of (i) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (ii) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(c) *One certificate per carrier: exceptions.* Except as provided in this paragraph, one official certificate shall be issued for the inspection of the grain in each truck, trailer, truck/trailer(s) combination, railcar, barge, or similarly sized carrier. The requirements of this paragraph are not applicable:

(1) When grain is inspected in a combined lot under § 800.85;

(2) When grain is inspected under paragraph (d) of this section; or

(3) When certification is at the option of the applicant in accordance with instructions.

(d) *Bulkhead lots.* If grain in a carrier is offered for official inspection as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be sampled, inspected, and graded separately in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot inspected. Each certificate shall show the term ''Bulkhead Lot,'' the approximate quantity or weight of the grain in the lot, the location of the lot in the carrier, and the grade of the grain in the lot.

(e) *Bottom not sampled.* If bulk grain offered for official inspection is at rest in a carrier or container and is fully accessible for sampling in an approved manner, except that the bottom of the carrier or container cannot be reached with each probe, the grain shall be sampled as thoroughly as possible with an approved probe. The grain in the resulting samples shall be inspected, graded, and certificated, except that each certificate shall show a statement, as specified in the instructions, indicating the depth probed. Any inspection which is based on a sample that does not represent the entire carrier or container does not meet the mandatory inspection requirements of section 5(a)(1) of the Act.

(f) *Partial inspection—heavily loaded*—(1) *General.* When an ''In'' movement of bulk grain is offered for inspection at rest in a carrier or container and is loaded in such a manner that it is possible to secure only door-probe or shallow-probe samples, the container shall be considered to be ''heavily loaded,'' and the request for inspection either shall be dismissed or a partial inspection shall be made. If the request is for the inspection of an ''Out'' movement of grain, the request shall be dismissed on the grounds that the grain is not accessible for a correct ''Out'' inspection.

(2) *Certification procedure.* If a partial inspection is made, the grain will be sampled as thoroughly as possible with an approved probe and inspected, graded, and a ''partial inspection—heavily loaded'' certificate issued. The certificate shall show the words ''Partial inspection—heavily loaded'' in the space provided for remarks. The type of samples that were obtained shall be described in terms of ''door probe'' or ''shallow probe.''

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection or an appeal inspection service on grain in a carrier or container that is certificated as ''partial inspection—heavily loaded'' shall be dismissed in accordance with § 800.48(a)(4).

(4) *Restriction.* No ''partial inspection—heavily loaded'' certificate shall be issued for sacked grain or any inspection other than the inspections described in paragraphs (f)(1) through (4) of this section and § 800.85(h)(2).

(g) *Part lots*—(1) *General.* If a portion of the grain in a carrier or container is removed, the grain that is removed and the grain remaining shall be considered separate lots. When an official inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and a ''part-lot'' inspection certificate issued.

(2) *Grain remaining in carrier or container.* The certificate for grain remaining in a carrier or container shall show (i) the following completed statement: ''Partly unloaded; results based on portion remaining in (show carrier or container identification),'' (ii) the term ''Part lot'' following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated amount and location of the part lot.

(3) *Grain unloaded from carrier or container.* If grain is sampled by official personnel during unloading, the certificate for the grain that is unloaded shall show (i) the completed statement: ''Part lot; results based on portion removed from (show carrier identification)'' and (ii) the term ''Part lot'' following the quantity information. If the grain is not sampled by official personnel during unloading, the certificate may, upon request of the applicant, show a completed statement such as ''Applicant states grain is ex-car '' or ''Applicant states grain is ex-barge ,'' but the certificate shall not otherwise show a carrier or container identification or the term ''Part lot.''

(h) *Identification for compartmented cars.* The identification for compartments in a compartmented railcar shall, in the absence of readily visible markings, be stated in terms of the location of the grain in a compartment, with the first compartment at the brake end of the car being identified as B–1, and the remaining compartments being numbered consecutively towards the other end of the car.

[50 FR 49671, Dec. 4, 1985, as amended at 57 FR 11428, Apr. 3, 1992]

### § 800.85 Inspection of grain in combined lots.

(a) *General.* The official inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers or containers (including barges designed for loading aboard a ship) as a combined lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure*—(1) *For inspection during loading, unloading, or at rest.* Applications for official inspection of grain as a combined lot shall (i) be filed in accordance with § 800.116; (ii) show the estimated quantity of grain that is to be certificated as one lot; (iii) show the contract grade if applicable; and (iv) identify each carrier into which grain is being loaded or from which grain is being unloaded.

(2) *Recertification.* An application for recertification as a combined lot of grain that has been officially inspected and certificated as two or more single lots shall (i) be filed not later than 2 business days after the latest inspection date of the single lots and (ii) show information specified in paragraph (b)(1) of this section.

(c) *Inspection procedure; general—land carriers and barges*—(1) *Inspection during loading, or unloading, or at rest.* Grain in two or more land carriers and barges that are to be officially inspected as a combined lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain in each individual carrier and inspected in accordance with procedures as prescribed in the instructions.

(2) *Recertification.* Grain that has been officially inspected and certificated as two or more single lots may be recertificated as a combined lot if (i) the grain in each lot was sampled in a reasonably continuous operation; (ii) the original inspection certificates issued for the single lots have been surrendered to official personnel; (iii) representative file samples of the single lots are available; (iv) the grain in the single lots is of one grade and quality; (v) official personnel who performed the inspection service for the single lots and those who are to recertificate the grain as a combined lot determine that the samples used as a basis for the inspection of the grain in the single lots were representative at the time of sampling and have not changed in quality or condition; and (vi) the quality or condition of the grain meets uniformity requirements established by the Service for official inspection of grain in combined lots.

(d) *Weighted or mathematical average.* Official factor and official criteria information shown on a certificate for grain in a combined lot shall, subject to the provisions of paragraphs (e) through (g) of this section, be based on the weighted or mathematical averages of the analysis of the sublots in the lot and shall be determined in accordance with the instructions.

(e) *Infested grain.* If the grain in a combined lot is offered for official inspection as it is being loaded aboard a carrier and the grain, or a portion of the grain, in a lot is found to be infested, according to applicable provisions of the Official U.S. Standards for

Grain, the applicant shall be notified and may exercise options specified in the instructions. When grain in railcars or trucks with permanently enclosed tops is considered infested, the applicant shall be given the option of (1) receiving a grade certificate with a special grade designation indicating that the entire lot is infested or (2) fumigating the grain in the lot in accordance with instructions and receiving a grade certificate without the special grade designation.

(f) *Grain uniform in quality.* Samples obtained from grain officially inspected as a combined lot shall be examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the combined lot shall be officially inspected and certificated as one lot. The requirements of this paragraph (f) and paragraph (c) of this section with respect to reasonably continuous loading or unloading do not apply to grain which is at rest in carriers when the grain is offered for inspection.

(g) *Grain not uniform in quality.* When grain officially inspected as a combined lot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and any grain which is loaded or unloaded at different times, shall be officially sampled, inspected, graded, and certificated as single lots.

(h) *Special certification procedures*—(1) *Grain not uniform in quality.* When grain in a combined lot is found to be not uniform in quality under paragraph (g) of this section, the official inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) other information required by the instructions.

(2) *Partial inspection.* When an inbound movement of bulk grain is offered for official inspection at rest as a combined lot and all carriers are not fully accessible for sampling, the request for official inspection either shall be dismissed or a combined lot inspection shall be made on those carriers that are accessible. Those lots that are not accessible shall be handled in accordance with § 800.84. If the request is for an official inspection service on an outbound movement of grain at rest in a combined lot, the request shall be dismissed on the ground that the grain is not accessible for a correct ''Out'' inspection.

(3) *Official mark.* If grain in a combined lot is inspected for grade as it is being loaded aboard two or more carriers, upon request of the applicant, the following mark shall be shown on the inspection certificate: ''Loaded under continuous official inspection'' or ''Loaded under continuous official inspection and weighing.''

(4) *Combined-lot certification; general.* Each official certificate for a combined-lot inspection service shall show the identification for the ''combined lot'' or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement ''Carrier identification available on official inspection log'' shall be shown on the inspection certificate in the space provided for remarks. The identification and any seal information for the carriers may be shown on the reverse side of the inspection certificate, provided the statement ''See reverse side'' is shown on the face of the certificate in the space provided for remarks.

(5) *Recertification.* If a request for a combined-lot inspection service is filed after the grain has been officially inspected and certificated as single lots, the combined-lot inspection certificate shall show (i) the date of inspection of the grain in the combined lot (if the single lots were inspected on different dates, the latest of the dates shall be shown); (ii) a serial number other than the serial numbers of the official inspection certificates that are to be superseded; (iii) the location of the grain, if at rest, or the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the approximate quantity of grain in the combined lot; (v) a completed statement showing the identification of any superseded certificates; and (vi) if at the time of issuing the combined-lot inspection certificate the superseded

certificates are not in the custody of the official personnel, a statement indicating that the superseded certificates have not been surrendered shall be clearly shown in the space provided for remarks. If the superseded certificates are in the custody of official personnel, the superseded certificates shall be clearly marked ''Void.''

(i) *Further combining.* After a combined-lot inspection certificate has been issued, there shall be no further combining and no dividing of the certificate.

(j) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any official inspection service other than as described in this section or (2) which shows a quantity of grain in excess of the quantity in the single lots.

[50 FR 49672, Dec. 4, 1985]

## § 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

(a) *General.* Official inspection for grade of bulk or sacked grain aboard, or being loaded aboard, or being unloaded from a ship, unit train, or lash barges as a single lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the official inspection of shiplot, unit train, and lash barges as a single lot shall:

(1) Be filed in advance of loading or unloading;

(2) Show the estimated quantity of grain to be certificated;

(3) Show the contract grade and official criteria if applicable; and

(4) Identify the carrier and stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedures*—(1) *General information.* Shiplot, unit train, and lash barge grain officially inspected as a single lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain offered for inspection and inspected and graded in accordance with a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions.

(2) *Tolerances.* The probability of accepting or rejecting portions of the lot during loading or unloading is dependent on inspection results obtained from preceding portions and the applied breakpoints and procedures. Breakpoints shall be periodically reviewed and revised based on new estimates of inspection variability. Tables 1 through 24 list the breakpoints for all grains.

TABLE 1—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED MALTING BARLEY AND SIX-ROWED BLUE MALTING BARLEY

| Grade | Minimum limits of— | | | | | | Maximum limits of— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Suitable malting types (percent) | | Sound barley (percent)[1] | | Damaged kernels (percent) | | Foreign material (percent) | | Other grains (percent) | | Skinned and broken kernels (percent) | | Thin barley (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 47.0 | −0.5 | 95.0 | −1.3 | 97.0 | −1.0 | 2.0 | 0.8 | 0.5 | 0.1 | 2.0 | 0.8 | 4.0 | 1.1 | 7.0 | 0.6 |
| U.S. No. 2 | 45.0 | −0.5 | 95.0 | −1.3 | 94.0 | −1.4 | 3.0 | 0.9 | 1.0 | 0.4 | 3.0 | 0.9 | 6.0 | 1.4 | 10.0 | 0.9 |
| U.S. No. 3 | 43.0 | −0.5 | 95.0 | −1.3 | 90.0 | −1.6 | 4.0 | 1.1 | 2.0 | 0.5 | 5.0 | 1.3 | 8.0 | 1.5 | 15.0 | 0.9 |
| U.S. No. 4 | 43.0 | −0.5 | 95.0 | −1.3 | 87.0 | −1.9 | 5.0 | 1.3 | 3.0 | 0.6 | 5.0 | 1.3 | 10.0 | 1.6 | 15.0 | 0.9 |

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

TABLE 2—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY

| Grade | Minimum limits of— | | | | | | Maximum limits of— | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Suitable malting types (percent) | | Sound barley[1] (percent) | | Wild oats (percent) | | Foreign material (percent) | | Skinned and broken kernels (percent) | | Thin barley (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 50.0 | −0.5 | 97.0 | −1.0 | 98.0 | −0.8 | 1.0 | 0.6 | 0.5 | 0.1 | 5.0 | 1.3 | 5.0 | 0.4 |

TABLE 2—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY—Continued

| Grade | Minimum limits of— | | | | | | Maximum limits of— | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Suitable malting types (percent) | | Sound barley [1] (percent) | | Wild oats (percent) | | Foreign material (percent) | | Skinned and broken kernels (percent) | | Thin barley (percent) | |
| U.S. No. 2 | 48.0 | −0.5 | 97.0 | −1.0 | 98.0 | −0.8 | 1.0 | 0.6 | 1.0 | 0.4 | 7.0 | 1.3 | 7.0 | 0.5 |
| U.S. No. 3 | 48.0 | −0.5 | 95.0 | −1.3 | 96.0 | −1.1 | 2.0 | 0.8 | 2.0 | 0.5 | 10.0 | 1.8 | 10.0 | 0.9 |
| U.S. No. 4 | 48.0 | −0.5 | 95.0 | −1.3 | 93.0 | −1.1 | 3.0 | 0.9 | 3.0 | 0.6 | 10.0 | 1.8 | 10.0 | 0.9 |

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTE: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six- and two-rowed barley varieties not meeting the above requirements shall be graded in accordance with standards established for the class Barley.

TABLE 3—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR BARLEY

| Grade | Minimum limits of— | | | | Maximum limits of— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Sound barley (percent) | | Damaged kernels [1] (percent) | | Heat damaged kernels (percent) | | Foreign material (percent) | | Broken kernels (percent) | | Thin barley (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 47.0 | −0.5 | 97.0 | −1.1 | 2.0 | 0.8 | 0.2 | 0.1 | 1.0 | 0.4 | 4.0 | 1.0 | 10.0 | 0.9 |
| U.S. No. 2 | 45.0 | −0.5 | 94.0 | −1.4 | 4.0 | 1.0 | 0.3 | 0.1 | 2.0 | 0.4 | 8.0 | 1.5 | 15.0 | 0.9 |
| U.S. No. 3 | 43.0 | −0.5 | 90.0 | −1.6 | 6.0 | 1.4 | 0.5 | 0.2 | 3.0 | 0.5 | 12.0 | 1.8 | 25.0 | 1.3 |
| U.S. No. 4 | 40.0 | −0.5 | 85.0 | −2.2 | 8.0 | 1.5 | 1.0 | 0.5 | 4.0 | 0.5 | 18.0 | 1.8 | 35.0 | 1.9 |
| U.S. No. 5 | 36.0 | −0.5 | 75.0 | −2.2 | 10.0 | 1.8 | 3.0 | 0.6 | 5.0 | 0.6 | 28.0 | 2.4 | 75.0 | 2.3 |

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

TABLE 4—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade or range limit | Breakpoint |
|---|---|---|
| Dockage | As specified by contract or load order | 0.23 |
| Two-rowed Barley | Not more than 10.0% of Six-rowed in Two-rowed | 1.8 |
| Six-rowed Barley | Not more than 10.0% of Two-rowed in Six-rowed | 1.8 |
| Malting (Blue Aleurone Layers) | Not less than 90.0% | −1.3 |
| Malting (White Aleurone Layers) | Not less than 90.0% | −1.3 |
| Smutty | More than 0.20% | 0.06 |
| Garlicky | 3 or more in 500 grams | 2⅓ |
| Ergoty | More than 0.10% | 0.13 |
| Infested | Same as in § 810.107 | 0 |
| Blighted | More than 4.0% | 1.1 |
| Injured-by-Frost Kernels | Not more than 1.9% | 0.1 |
| Injured-by-Heat Kernels | Not more than 0.2% | 0.04 |
| Frost-damaged Kernels | Not more than 0.4% | 0.05 |
| Heat-damaged Kernels | Not more than 0.1% | 0.1 |
| Other Grains | Not more than 25.0% | 2.4 |
| Moisture | As specified by contract or load order grade | 0.5 |

TABLE 5—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR CORN

| Grade | Minimum test weight per bushel (pounds) | | Maximum limits of— | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | Damaged kernels | | | | | |
| | | | Heat-damaged kernels (percent) | | Total (percent) | | Broken corn and foreign material (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 56.0 | −0.4 | 0.1 | 0.1 | 3.0 | 1.0 | 2.0 | 0.2 |
| U.S. No. 2 | 54.0 | −0.4 | 0.2 | 0.2 | 5.0 | 1.3 | 3.0 | 0.3 |
| U.S. No. 3 | 52.0 | −0.4 | 0.5 | 0.3 | 7.0 | 1.5 | 4.0 | 0.3 |
| U.S. No. 4 | 49.0 | −0.4 | 1.0 | 0.5 | 10.0 | 1.8 | 5.0 | 0.4 |
| U.S. No. 5 | 46.0 | −0.4 | 3.0 | 0.9 | 15.0 | 2.1 | 7.0 | 0.4 |

TABLE 6—BREAKPOINTS FOR CORN SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Flint | 95 percent or more of flint corn | −1.0 |
| Flint and Dent | More than 5 percent, but less than 95 percent of flint corn | 1.0 or −1.0 |
| Infested | Same as in § 810.107 | 0 |
| Corn of other colors: | | |
| White | Not more than 2.0 percent | 0.8 |
| Yellow | Not more than 5.0 percent | 1.0 |
| Waxy | 95 percent or more | −3.0 |
| High BCFM | As specified by contract or load order grade | 10 percent of the load order grade |
| Moisture | As specified by contract or load order grade | 0.4 |

TABLE 7—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR FLAXSEED

| Grade | Minimum test weight per bushel (pounds) | | Maximum limits of-damaged kernels | | | |
|---|---|---|---|---|---|---|
| | | | Heat-damaged kernels (percent) | | Total (percent) | |
| | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 49.0 | –0.1 | 0.2 | 0.1 | 10.0 | 0.9 |
| U.S. No. 2 | 47.0 | –0.1 | 0.5 | 0.1 | 15.0 | 1.1 |

TABLE 8—BREAKPOINTS FOR FLAXSEED SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Moisture | As specified by load order or contract grade | 0.4 |
| Dockage | 0.99 percent or above | 0.32 |

TABLE 9—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR MIXED GRAIN

| Grade | Maximum Limits of— | | | | |
|---|---|---|---|---|---|
| | Moisture (percent) | Damaged kernels | | | |
| | | Total (percent) | | Heat-damaged kernels (percent) | |
| | | GL | BP | GL | BP |
| U.S. Mixed Grain | 16.0 | 15.0 | 0.6 | 3.0 | 0.4 |

Note: There is no tolerance for U.S. Sample grade Mixed Grain.

TABLE 10—BREAKPOINTS FOR MIXED GRAIN SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Smutty | 15 or more in 250 grams (wheat, rye, or triticale predominates) | 6 |
| | More than 0.2% (all other mixtures) | 0.05 |
| Ergoty | More than 0.30% (rye wheat predominates) | 0.13 |
| | More than 0.10% (all other mixtures) | 0 |
| Garlicky | 2 or more per 1,000 grams (wheat, rye, or triticale predominates) | 1 |
| | 4 or more per 500 grams (all other mixtures) | 2 |
| Infested | Same as in § 810.107 | 0 |
| Blighted | More than 4.0% (barley predominates) | 1.1 |
| Treated | Same as in § 810.805 | 0 |
| Moisture | As specified by contract or load order grade | 0.5 |

TABLE 11—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR OATS

| Grade | Minimum limits of— | | | | Maximum limits of— | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Sound Oats (percent) | | Heat-damaged kernels (percent) | | Foreign material (percent) | | Wild Oats (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 36.0 | −0.5 | 97.0 | −0.8 | 0.1 | 0.1 | 2.0 | 0.4 | 2.0 | 0.6 |

TABLE 11—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR OATS—Continued

| Grade | Minimum limits of— | | | | Maximum limits of— | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | | Sound Oats (percent) | | Heat-damaged kernels (percent) | | Foreign material (percent) | | Wild Oats (percent) | |
| U.S. No. 2 | 33.0 | −0.5 | 94.0 | −1.2 | 0.3 | 0.4 | 3.0 | 0.4 | 3.0 | 0.8 |
| U.S. No. 3[1] | 30.0 | −0.5 | 90.0 | −1.4 | 1.0 | 0.5 | 4.0 | 0.5 | 5.0 | 1.1 |
| U.S. No. 4[2] | 27.0 | −0.5 | 80.0 | −1.9 | 3.0 | 0.8 | 5.0 | 0.5 | 10.0 | 1.4 |

[1] Oats that are Slightly Weathered shall be graded not higher than U.S. No. 3.
[2] Oats that are Badly Stained or Materially Weathered shall be graded not higher than U.S. No. 4.

TABLE 12—BREAKPOINTS FOR OATS SPECIAL GRADES AND FACTORS

| Special grade or factors | Grade limit | Breakpoint |
|---|---|---|
| Heavy | 38 pounds or more | −0.5 |
| Extra Heavy | 40 pounds or more | −0.5 |
| Moisture | As specified by contract or load order grade | 0.5 |
| Thin | More than 20.0% | 0.5 |
| Smutty | More than 0.2% | 0.05 |
| Ergoty | More than 0.10% | 0.10 |
| Garlicky | 4 or more in 500 grams | 2⅓ |
| Infested | Same as in § 810.107 | 0 |
| Bleached | Same as in § 810.1005 | 0 |

TABLE 13—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR RYE

| Grade | Minimum test weight per bushel (pounds) | | Maximum limits of— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Foreign Material | | | | Damaged kernels(percent) | | | | Thin rye (percent) | |
| | | | Foreign matter other than wheat (percent) | | Total (percent) | | Heat-damaged (percent) | | Total (percent) | | | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 56.0 | −0.5 | 1.0 | 0.4 | 3.0 | 0.8 | 0.2 | 0.1 | 2.0 | 0.8 | 10.0 | 0.6 |
| U.S. No. 2 | 54.0 | −0.5 | 2.0 | 0.5 | 6.0 | 1.1 | 0.2 | 0.1 | 4.0 | 1.1 | 15.0 | 0.8 |
| U.S. No. 3 | 52.0 | −0.5 | 4.0 | 0.8 | 10.0 | 1.4 | 0.5 | 0.4 | 7.0 | 1.4 | 25.0 | 0.9 |
| U.S. No. 4 | 49.0 | −0.5 | 6.0 | 0.8 | 10.0 | 1.4 | 3.0 | 0.8 | 15.0 | 2.0 | ..... | ..... |

TABLE 14—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Moisture | As specified by contract or load order grade | 0.3 |
| Light Garlicky | 2 or more per 1,000 grams | 1⅓ |
| Garlicky | More than 6 per 1,000 grams | 7⅓ |
| Ergoty | More than 0.30% | 0.10 |
| Plump | Not more than 5.0% through 0.064×3/8 sieve | 0.5 |
| Light Smutty | More than 14 per 250 grams | 6 |
| Smutty | More than 30 per 250 grams | 10 |
| Infested | Same as in § 810.107 | 0 |
| Dockage | As specified by contract or load order grade | 0.2 |

TABLE 15—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

| Grade | Minimum test weight per bushel (pounds) | | Maximum limits of— | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Damaged kernels | | | | Broken kernels and foreign material | | | |
| | | | Heat-damaged (percent) | | Total (percent) | | Total (percent) | | Foreign material (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 57.0 | −0.4 | 0.2 | 0.1 | 2.0 | 1.1 | 4.0 | 0.3 | 1.5 | 0.3 |
| U.S. No. 2 | 55.0 | −0.4 | 0.5 | 0.4 | 5.0 | 1.8 | 7.0 | 0.4 | 2.5 | 0.4 |
| U.S. No. 3[1] | 53.0 | −0.4 | 1.0 | 0.5 | 10.0 | 2.3 | 10.0 | 0.5 | 3.5 | 0.5 |
| U.S. No. 4 | 51.0 | −0.4 | 3.0 | 0.8 | 15.0 | 2.8 | 13.0 | 0.6 | 4.5 | 0.6 |

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

| Special grade or factors | Grade limit | Breakpoint |
|---|---|---|
| Class Tannin | Not less than 90.0% | −1.9 |
| Sorghum | Not less than 97.0% | −1.0 |
| White | Not less than 98.0% | −0.9 |
| Smutty | 20 or more in 100 grams | 8 |
| Infested | Same as in § 810.107 | 0 |
| Dockage | 0.99% and above | 0.32 |
| Moisture | As specified by contract or load order grade | 0.5 |

TABLE 17.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

| Grade | Maximum limits of— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Damaged kernels | | | | Foreign material (percent) | | Splits (percent) | | Soybeans of other colors (percent) | |
| | Heat-damaged (percent) | | Total (percent) | | | | | | | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 0.2 | 0.2 | 2.0 | 0.8 | 1.0 | 0.2 | 10.0 | 1.6 | 1.0 | 0.7 |
| U.S. No. 2 | 0.5 | 0.3 | 3.0 | 0.9 | 2.0 | 0.3 | 20.0 | 2.2 | 2.0 | 1.0 |
| U.S. No. 3[1] | 1.0 | 0.5 | 5.0 | 1.2 | 3.0 | 0.4 | 30.0 | 2.5 | 5.0 | 1.6 |
| U.S. No. 4[2] | 3.0 | 0.9 | 8.0 | 1.5 | 5.0 | 0.5 | 40.0 | 2.7 | 10.0 | 2.3 |

[1] Soybeans that are purple mottled or stained which will not be graded higher than U.S. No. 3.
[2] Soybeans that are materially weathered which will not be graded not higher than U.S. No. 4.

TABLE 18—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Garlicky | 5 or more per 1,000 grams | 2 |
| Infested | Same as in § 810.107 | 0 |
| Soybeans of other colors | Not more than 10.0% | 2.3 |
| Moisture | As specified by contract or load order grade | 0.3 |
| Test Weight | As specified by contract or load order | −0.4 |

TABLE 20—BREAKPOINTS FOR SUNFLOWER SEED SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Moisture | As specified by contract or load order grade | 0.5 |
| Foreign Material | 1.25% and less | 0.27 |
| | 1.26% and above | 0.39 |
| Admixture | As specified by contract or load order grade | 0.6 |

TABLE 21—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TRITICALE

| Grade | Minimum test weight per bushel (percent) | | Maximum limits of— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Damaged kernels | | | | Foreign material | | | | Shrunken and broken kernels (percent) | | Defects[3] (percent) | |
| | | | Heat-damaged (percent) | | Total[1] (percent) | | Material other than wheat or rye (percent) | | Total[2] (percent) | | | | | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 48.0 | –0.5 | 0.2 | 0.1 | 2.0 | 0.8 | 1.0 | 0.4 | 2.0 | 0.6 | 5.0 | 0.8 | 5.0 | 1.3 |
| U.S. No. 2 | 45.0 | –0.5 | 0.2 | 0.1 | 4.0 | 1.1 | 2.0 | 0.5 | 4.0 | 0.9 | 8.0 | 0.8 | 8.0 | 1.3 |
| U.S. No. 3 | 43.0 | –0.5 | 0.5 | 0.4 | 8.0 | 1.5 | 3.0 | 0.6 | 7.0 | 1.2 | 12.0 | 1.6 | 12.0 | 2.3 |
| U.S. No. 4 | 41.0 | –0.5 | 3.0 | 0.8 | 15.0 | 2.0 | 4.0 | 0.8 | 10.0 | 1.4 | 20.0 | 2.3 | 20.0 | 2.3 |

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects includes damaged kernels (total), foreign material (total), and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

TABLE 22—BREAKPOINTS FOR TRITICALE SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Garlicky | 2 or more per 1,000 grams | 1⅓ |
| Ergoty | More than 0.10% | 0.1 |
| Smutty | More than 14 per 250 grams | 6 |
| Infested | Same as in § 810.107 | 0 |
| Dockage | 0.99% or above | 0.32 |
| Moisture | As specified by contract or load order grade | 0.5 |

TABLE 23—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

| Grade | Minimum limits of— | | Maximum limits of— | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel | | Damaged kernels | | Foreign material (percent) | Shrunken and broken kernels (percent) | Defects[3] (percent) | Wheat of other classes[4] | |
| | Hard red spring wheat or white club wheat[1] (pounds) | All other classes and subclasses (pounds) | Heat-damaged kernels (percent) | Total[2] (percent) | | | | Contrasting classes (percent) | Total[5] (percent) |
| | GL BP | GL BP | GL BP | GL BP | GL BP | GL BP | GL BP | GL BP | GL BP |
| U.S. No. 1 | 58.0 −0.3 | 60.0 −0.3 | 0.2 0.2 | 2.0 1.0 | 0.4 0.2 | 3.0 0.3 | 3.0 0.7 | 1.0 0.7 | 3.0 1.6 |
| U.S. No. 2 | 57.0 −0.3 | 58.0 −0.3 | 0.2 0.2 | 4.0 1.5 | 0.7 0.3 | 5.0 0.4 | 5.0 0.9 | 2.0 1.0 | 5.0 2.1 |
| U.S. No. 3 | 55.0 −0.3 | 56.0 −0.3 | 0.5 0.3 | 7.0 1.9 | 1.3 0.4 | 8.0 0.5 | 8.0 1.2 | 3.0 1.3 | 10.0 2.9 |

TABLE 23—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT—Continued

| Grade | Minimum limits of— | | Maximum limits of— | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel | | Damaged kernels | | Foreign material (percent) | Shrunken and broken kernels (percent) | Defects [3] (percent) | Wheat of other classes [4] | |
| | Hard red spring wheat or white club wheat [1] (pounds) | All other classes and subclasses (pounds) | Heat-damaged kernels (percent) | Total [2] (percent) | | | | Contrasting classes (percent) | Total [5] (percent) |
| U.S. No. 4 ..... | 53.0 −0.3 | 54.0 −0.3 | 1.0 0.4 | 10.0 2.3 | 3.0 0.6 | 12.0 0.6 | 12.0 1.4 | 10.0 2.3 | 10.0 2.9 |
| U.S. No. 5 ..... | 50.0 −0.3 | 51.0 −0.3 | 3.0 0.7 | 15.0 2.7 | 5.0 0.7 | 20.0 0.7 | 20.0 1.5 | 10.0 2.3 | 10.0 2.9 |

[1] These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

| Special grade or factor | Grade limit | Breakpoint |
|---|---|---|
| Moisture ..... | As specified by contract or load order grade ..... | 0.3 |
| Garlicky ..... | More than 2 bulblets per 1,000 grams ..... | 1⅓ |
| Light smutty ..... | More than 5 smut balls per 250 grams ..... | 3 |
| Smutty ..... | More than 30 smut balls per 250 grams ..... | 10 |
| Infested ..... | Same as in § 810.107 ..... | 0 |
| Ergoty ..... | More than 0.05% ..... | 0.03 |
| Treated ..... | Same as in § 810.2204 ..... | 0 |
| Dockage ..... | As specified by contract or load order grade ..... | 0.2 |
| Protein ..... | As specified by contract or load order grade ..... | 0.5 |
| . | | |
| Class and Subclass | | |
| Hard red spring: | | |
| DNS ..... | 75% or more DHV ..... | −5.0 |
| NS ..... | 25% or more DHV but less than 75% DHV ..... | −5.0 |
| Durum: | | |
| HADU ..... | 75% or more HVAC ..... | −5.0 |
| ADU ..... | 60% or more HVAC but less than 75% of HVAC ..... | −5.0 |
| Soft white: | | |
| SWH ..... | Not more than 10% white club wheat ..... | 2.0 |
| WHCB ..... | Not more than 10% of other soft white wheat ..... | 2.0 |
| WWH ..... | More than 10% WHCB and more than 10% of other soft white wheat ..... | −3.0 |

(3) *Grain accepted by the inspection plan.* Grain which is offered for inspection as part of a single lot and accepted by a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions shall be certificated as a single lot provided it was sampled in a reasonably continuous operation. Official factor and official criteria information shown on the certificate shall be based on the weighted or mathematical averages of the analysis of sublots.

(4) *Grain rejected by the inspection plan.* When grain which is offered for inspection as part of a single lot is rejected by the plan or is not sampled in a reasonably continuous operation, the grain in each portion shall be certificated separately. If any portion of grain is not accepted by the plan and designated a material portion, the applicant shall be promptly notified and have the option of:

(i) Removing the material portion from the carrier; or

(ii) Requesting the material portion be separately certificated; or

(iii) Requesting either a reinspection or an appeal inspection of the material portion; or

(iv) Requesting a reinspection service and/or an appeal inspection service on the entire lot.

(5) *Reinspection service and appeal inspection service.* A reinspection or an appeal inspection may be requested on a material portion. A Board appeal inspection may also be requested on a

material portion after the reinspection or appeal inspection. A reinspection, an appeal inspection, and a Board appeal inspection may be requested on the total sublots in the lot.

(i) *Material portions.* A material portion designated by the plan may be reinspected or appeal inspected once in the field, but not both, and once at the Board of Appeals and Review. The reinspection or appeal inspection result shall, unless a material error is found, be averaged with the original inspection determination. The Board appeal inspection result shall, unless a material error is found, be averaged with the previous inspection result. The inspection plan tolerances shall be reapplied to the material portion grain to determine acceptance or rejection. If a material error is found, the reinspection or appeal inspection result shall replace the original inspection result or the Board appeal result shall replace the previous inspection result. For purposes of this section, a material error is defined as results differing by more than two standard deviations. Acceptance or rejection of that portion of grain shall be based on the reinspection or appeal inspection and on the Board appeal inspection result alone when a material error is found.

(ii) *Entire lot.* The applicant may request a reinspection service, an appeal inspection service, and a Board appeal inspection service on the entire lot. Inspection results for these services shall replace the previous inspection results. The tolerances shall be reapplied to all portions of the entire lot to determine acceptance or rejection.

(d) *Infested grain*—(1) *Available options.* If gain or any portion of grain in a single shiplot, unit train, or lash barge lot is found to be infested, according to the provisions of the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of:

(i) Unloading the portion of infested grain from the lot and an additional amount of other grain in common stowage with the infested grain; or

(ii) When applicable, completing the loading and treating all infested grain in the lot; or

(iii) When applicable, treating the infested grain for the purpose of destroying the insects, subject to subsequent examination by official personnel; or

(iv) Continue loading without treating the infested grain, in which case all of the infested grain in the lot and all grain in common stowage areas with the infested grain will be officially certificated as infested according to the provisions of the Official U.S. Standards for Grain.

(2) *Exception.* If infested grain in loaded into common stowage with a lot, or a portion of a lot, which has not been officially certificated as being infested, the applicant loading the infested grain may not use the option in paragraph (d)(1)(i) of this section.

(3) *With treatment.* If infested grain is treated with a fumigant in accordance with the instructions and the treatment is witnessed by official personnel, the official sampling, inspection, grading, and certification of the lot shall continue as though the infested condition did not exist.

(e) *Special certification procedures*—(1) *Rejected grain.* When grain is rejected by the inspection plan under paragraph (c)(4) of this section, the official inspection certificate for each different portion of different quality shall show:

(i) A statement that the grain has been loaded aboard with grain of other quality;

(ii) The grade, location, or other identification and approximate quanity of grain in the portions; and

(iii) Other information required by the regulations and the instructions.

The requirement of paragraph (e)(1)(i) of this section does not apply to grain that is inspected as it is unloaded from the carrier or to portions loaded in separate carriers or stowage space.

(2) *Common stowage.* (i) *Without separation.* When bulk grain is offered for official inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the official inspection certificate for the grain in each lot shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* When separations are laid between lots, the official inspection certificates shall show the

kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph are not applicable to the first lot in a stowage area unless a second lot is loaded, in whole or in part, in the stowage area prior to issuing the official inspection certificate for the first lot.

(3) *Protein.* A special statement indicating the actual protein range of a lot shall be shown on the official inspection certificate if the difference between the lowest and highest protein determinations for the lot exceeds 1.0 percent when protein is officially determined and a specific range limit is not established by the contract grade.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be officially inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single lot is officially inspected for grade as it is being loaded, upon request, the following official mark shall be shown on the inspection certificate: ''Loaded under continuous official inspection.''

[55 FR 24042, June 13, 1990; 55 FR 46131, Nov. 1, 1990; 56 FR 4675, Feb. 5, 1991; 57 FR 58965, 58970, Dec. 14, 1992; 61 FR 18490, Apr. 26, 1996; 63 FR 20056, Apr. 23, 1998; 64 FR 6783, Feb. 11, 1999; 71 FR 52405, Sept. 6, 2006; 71 FR 77853, Dec. 27, 2006]

EFFECTIVE DATE NOTE: At 72 FR 39732, July 20, 2007, § 800.86 was amended by revising table 15 in paragraph (c)(2), effective June 1, 2008. For the convenience of the user, the revised text is set forth as follows:

**§ 800.86 Inspection of shiplot, unit train and lash barge grain in single lots.**

* * * * *

(c) * * *

(2) * * *

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

| Grade | Minimum test weight per bushel (pounds) | | Maximum limits of— | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Damaged kernels | | | | Broken kernels and foreign material | | | |
| | | | Heat-damaged (percent) | | Total (percent) | | Total (percent) | | Foreign material (percent) | |
| | GL | BP | GL | BP | GL | BP | GL | BP | GL | BP |
| U.S. No. 1 | 57.0 | −0.4 | 0.2 | 0.1 | 2.0 | 1.1 | 3.0 | 0.5 | 1.0 | 0.4 |
| U.S. No. 2 | 55.0 | −0.4 | 0.5 | −0.4 | 5.0 | 1.8 | 6.0 | 0.6 | 2.0 | 0.5 |
| U.S. No. 3[1] | 53.0 | −0.4 | 1.0 | 0.5 | 10.0 | 2.3 | 8.0 | 0.7 | 3.0 | 0.6 |
| U.S. No. 4 | 51.0 | −0.4 | 3.0 | 0.8 | 15.0 | 2.8 | 10.0 | 0.8 | 4.0 | 0.7 |

[1] Sorghum that is distinctly discolored shall be graded not higher than U.S. No. 3.

* * * * *

**§ 800.87 New inspections.**

(a) *Identity lost.* An applicant may request official personnel to perform a new original inspection service on an identified lot of grain, or on an identified carrier or container, if the identity of the lot or the carrier or container has been lost.

(b) *Identity not lost.* If the identity of the grain or the carrier or container is not lost, a new original inspection shall not be performed on the same identified lot of grain or carrier or container in the same assigned area of responsiblity within 5 business days after the last official inspection.

[50 FR 49674, Dec. 4, 1985]

**§ 800.88 Loss of identity.**

(a) *Lots.* Except as noted in paragraph (d) of this section, the indentity of a lot of grain shall be considered lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; or (2) a portion of grain or other material, including additives, is added to the lot after the orginal inspection was performed, unless the addition of the additive was

performed in accordance with the regulations and the instructions. At the option of official personnel performing a reinspection, appeal inspection, or Board appeal inspection service, the identity of grain in a closed carrier or container shall be considered lost if the carrier or container is not sealed or if the seal record is incomplete.

(b) *Carriers and containers.* The indentity of a carrier or container shall be considered lost when (1) the stowage area is cleaned, painted, treated, fumigated, or fitted after the original inspection was performed; or (2) the identification of the carrier or container has been changed since the original inspection was performed.

(c) *Submitted samples.* The identity of a submitted sample of grain shall be considered lost when (1) the identifying number, mark, or symbol for the sample is lost or destroyed or (2) the samples have not been retained and protected by official personnel as prescribed in the instructions.

(d) *Additives.*[1] If additives are applied during loading to outbound, including export, grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

[52 FR 6495, Mar. 4, 1987, as amended at 58 FR 3212, Jan. 8, 1993; 59 FR 52077, Oct. 14, 1994]

WEIGHING PROVISIONS AND PROCEDURES

### § 800.95 Methods and order of performing weighing services.

(a) *Methods.* All Class X or Class Y weighing, checkweighing, checkloading, stowage examination, and other weighing services shall be performed by official personnel or approved weighers using approved weighing equipment and according to procedures prescribed in the regulations and the instructions.

(b) *Order of service.* Weighing services shall be performed, to the extent practicable, in the order in which requests are received. Official personnel must mark or stamp the date received on each written request for service. Precedence will be given to requests for weighing required by sections 5(a)(1) or 5(a)(2) of the Act.

[52 FR 6495, Mar. 4, 1987]

### § 800.96 Weighing procedures.

(a) *Inbound.* Inbound grain that is to be weighed must be routed directly from the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an inbound lot shall be considered lost when a portion of the lot is transferred or otherwise removed prior to weighing or a portion of grain or other material is added to the lot prior to weighing. When loss of identity occurs, no amount shall be shown in the ''Net Weight'' portion of the weight certificate for the lot.

(b) *Outbound.* Outbound grain that has been weighed must be routed directly from the scale to the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an outbound lot will be considered lost if a portion of the lot is transferred or otherwise removed from the lot after weighing or a portion of grain or other material is added to the lot after weighing. When loss of identity occurs, no amount shall be shown in the ''Net Weight'' portion of the weight certificate for the lot.

(c) *Exceptions*—(1) *Spills.* (i) *Outbound.* (A) *Replaced.* If a spill occurs in handling and loading of outbound grain and the spilled grain is retrieved, or is replaced in kind, and is loaded on board during the loading operations, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, an additional certificate may be issued by the agency or the field office to show the weight of the

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

additional grain that was used to replace a spill.

(B) *Not replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the weight certificate shall show the weight of the grain that was actually weighed, minus the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated amount of grain that was spilled. The applicant may, upon request, have the total amount that was weighed shown on the weight certificate with the estimated amount of the spilled grain noted.

(ii) *Inbound.* If a spill occurs in the handling of inbound grain and the grain is not retrieved and weighed, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the spill as prescribed in the instructions.

(2) *Additives.*[1] If additives are applied during loading to outbound, including export, grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show the actual weight of the grain after the application of the additive for inbound grain or the actual weight of the grain prior to the application of the additive for outbound or export grain and a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(3) *Dust.* If dust is removed during the handling of grain, the weight certificate shall not be adjusted to reflect the weight of the removed dust.

(4) *Commingled carriers.* If grain from two or more identified carriers becomes mixed, (i) the combined weight of the grain shall be shown in the ''Net Weight'' block of one certificate with all carrier identification shown in the identification of carrier section of the certificate, or (ii) upon request of the applicant, a certificate shall be issued for each carrier with the ''Net Weight'' block crossed out, and with the total combined weight unloaded and the identification of the other carrier(s) shown in the ''Remarks'' section.

(5) *Unremoved grain.* If, after unloading an inbound carrier, there is sound grain remaining in the carrier that could have been removed with reasonable effort, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the grain remaining in the carrier.

[52 FR 6495, Mar. 4, 1987, as amended at 58 FR 3212, Jan. 8, 1993; 59 FR 52077, Oct. 14, 1994]

### § 800.97 Weighing grain in containers, land carriers, barges, and shiplots.

(a) *General.* The weighing of grain loaded or unloaded from any carrier shall be conducted according to this section and the instructions.

(b) *Procedure*—(1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain shall be weighed and certificated as one lot. The identification of the carrier shall be recorded on the scale tape or ticket and the weight certificate.

(2) *Sacked grain.* If sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed.

(3) *Part lots.* If a portion of an inbound lot of grain is unloaded and a portion is left in the carrier because it is not uniform in quality or condition, or the lot is unloaded in other than a reasonably continuous operation, the portion that is removed and the portion remaining in the carrier shall be considered as part lots and shall be weighed and certificated as part lots.

(c) *Certification of trucklots, carlots, and bargelots*—(1) *Basic requirement.* One official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. This requirement shall not be applicable to grain weighed as a combined lot under § 800.98.

(2) *Part-lot weight certificates.* A part-lot weight certificate shall show (i) the

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

weight of the portion that is unloaded and (ii) the following statement: ''Partlot: The net weight stated herein reflects a partial unload.''

(d) *Certification of shiplot grain*—(1) *Basic requirement.* The certificate shall show (i) if applicable, a statement that the grain has been loaded aboard with other grain, (ii) the official weight, (iii) the stowage or other identification of the grain, and (iv) other information required by the regulations and the instructions.

(2) *Common stowage.* (i) *Without separation.* If bulk grain is offered for weighing as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot shall show that the lot was loaded aboard with other grain or another commodity without separation and the relative location of the grain.

(ii) *With separation.* If separations are laid between adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area before issuing the official weight certificate for the first lot.

(3) *Official mark.* If the grain is officially weighed in a reasonably continuous operation, upon request by the applicant, the following statement may be shown on the weight certificate: ''Loaded under continuous official weighing.''

[52 FR 6496, Mar. 4, 1987]

## § 800.98 Weighing grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from two or more carriers as a combined lot shall be conducted according to this section and the instructions.

(b) *Weighing procedure.* (1) Single lot weighing. Single lots of grain that are to be weighed as a combined lot shall be weighed in one location. The grain loaded into or unloaded from each carrier must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample shall be obtained from the grain in each carrier unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certificated as two or more single lots may be recertificated as a combined lot provided that (i) the grain in each single lot has been weighed in one location, (ii) the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, (iii) the official personnel who performed the weighing service for the single lots and the official personnel who are to recertificate the grain as a combined lot determine that the weight of the grain in the lots has not since changed and, in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

(3) *Grain uniform in quality.* An applicant may request that grain be weighed and certificated as a combined lot whether or not the grain is uniform in quality for the purpose of inspection under the Act.

(c) *Certification procedures*—(1) *General.* Each certificate for a combined-lot Class X or Class Y weighing service shall show the identification for the ''Combined lot'' or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate, provided the statement ''See reverse side'' is shown on the face of the certificate in the space provided for remarks.

(2) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certificated, the combined-lot weighing certificate shall show (i) the date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the

weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the combined lot; (v) a completed statement showing the identification of any superseded certificate as follows: ''This combined-lot certificate supersedes certificate Nos. ____, dated ____; and (vi) if at the time of issuing the combined-lot weight certificate the superseded certificates are not in the custody of the agency or field office, the statement ''The superseded certificates identified herein have not been surrendered'' shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked ''Void.''

(3) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be certificated in accordance with the provisions in § 800.97(c)(2).

(4) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following statement shall be shown on the weight certificate: ''Loaded under continuous official weighing,'' or ''Loaded under continuous official inspection and weighing.''

(5) *Further combining.* After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate.

(6) *Limitations.* No combined-lot weight certificate shall be issued (i) for any weighing service other than as described in this section or (ii) which shows a weight of grain different from the total of the combined single lot.

[52 FR 6496, Mar. 4, 1987]

### § 800.99 Checkweighing sacked grain.

(a) *General.* Each checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel according to this section and procedures prescribed in the instructions.

(b) *Representative sample.* No official weight sample shall be considered to be representative of a lot of sacked grain unless the sample is of the size prescribed in the instructions and has been obtained and weighed according to the procedures prescribed in the instructions.

(c) *Protecting samples and data.* Official personnel and other employees of an agency or the Service shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the samples and sample data of their representativeness.

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

(e) *Equipment and labor.* Each applicant for weighing services shall provide necessary labor for obtaining official weight samples and place the samples in a position for weighing and shall supply suitable weighing equipment approved by the Service, pursuant to the regulations and the instructions.

(f) *Disposition of official weight samples.* In weighing sacked grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

(g) *Provisions by kinds of service*—(1) *''IN'' movements.* Each checkweighing on an ''IN'' movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest in the carrier or during unloading, in accordance with procedures prescribed in the instructions.

(2) *''OUT'' movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained as the grain is being loaded aboard the final carrier, as the grain is being sacked, or while the grain is at rest in a warehouse or holding facility, in accordance with procedures prescribed in the instructions.

(3) *''OUT'' movements (other than export).* Each checkweighing of an ''OUT'' movement of nonexport sacked grain shall be based on an official weight sample obtained from the grain as the grain is being loaded in the carrier, or while the grain is at rest in the carrier, or while the grain is at rest in a warehouse or holding facility, or while the grain is being sacked, in accordance with procedures prescribed in the instructions.

(4) *''LOCAL'' weighing.* Each checkweighing of a ''LOCAL'' movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest or while the grain is being transferred, in accordance with procedures prescribed in the instructions.

[52 FR 6497, Mar. 4, 1987, as amended at 68 FR 19138, Apr. 18, 2003]

ORIGINAL SERVICES

**§ 800.115 Who may request original services.**

(a) *General.* Any interested person may request original inspection and weighing services. The kinds of inspection and weighing services are described in § 800.75.

(b) *Class Y weighing services.* A request for Class Y weighing services at an export elevator at an export port location shall cover all lots shipped or received in a specific type of carrier. At all other elevators, the request shall cover all lots shipped from or to a specific location in a specific type of carrier. Each request shall be for a contract period of at least 3 months, but a facility may, upon satisfactory notification, exempt specific unit trains from the request.

(c) *Contract services.* Any interested person may enter into a contract with an agency or the Service whereby the agency or Service will provide original services for a specified period and the applicant will pay a specified fee.

(Approved by the Office of Management and Budget under control number 0580–0012)

[50 FR 45393, Oct. 31, 1985]

**§ 800.116 How to request original services.**

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580–0013)

[68 FR 19139, Apr. 18, 2003]

### § 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service*—(1) *Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other than seasonal ice making waterways unnavigable, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

[68 FR 19139, Apr. 18, 2003]

### § 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under Control Number 0580–0013)

[68 FR 19139, Apr. 18, 2003]

## OFFICIAL REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

### § 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Any interested person may request a reinspection or review of weighing service, except as provided for in § 800.86(c)(5). Only one reinspection service or review of weighing service may be performed on any original service. When more than one interested person requests a reinspection or review of weighing service, the first person to file is the applicant of record.

(b) *Kind and scope of request.* A reinspection or review of weighing service is limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request a reinspection of a specific factor(s), official grade and factors, or official criteria. In addition, reinspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013.)

[50 FR 45393, Oct. 31, 1985, as amended at 54 FR 5924, Feb. 7, 1989; 55 FR 24048, June 13, 1990; 68 FR 61328, Oct. 28, 2003]

### § 800.126 How to request reinspection or review of weighing services.

(a) *General.* Requests shall be made with the agency or field office that performed the original service. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel. Copies of request forms may be obtained from the agency or field office. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold services pending the receipt of the required documentation. A reinspection certificate or the results of a review of weighing service shall not be issued unless (1) the documentation requested under § 800.46 has been submitted or (2) official personnel determine sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available shall be included in the record of the official service.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests.

(1) *Reinspection services.* Requests shall be received (i) before the grain has left the specified service point where the grain was located when the original inspection was performed; (ii) no later than the close of business on the second business day following the date of the original inspection; and (iii) before the identity of the grain has been lost. If a representative file sample, as prescribed in § 800.82, is available, official personnel may waive the requirements pursuant to this subparagraph. The requirements of paragraph (b)(1)(i) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraph (b)(1)(ii) and (iii) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(1)(ii) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the reinspection service.

(2) *Review of weighing services.* Requests shall be received no later than 90 calendar days after the date of the original Class X or Class Y weighing service.

(Approved by the Office of Management and Budget under control number 0580–0012)

[50 FR 45394, Oct. 31, 1985]

### § 800.127 Who shall perform reinspection or review of weighing services.

Reinspection or review of weighing services shall be performed by the agency or field office that performed the original service.

[50 FR 45394, Oct. 31, 1985]

### § 800.128 Conflicts of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for a reinspection or a review of weighing service if they participated in the original service unless there is only one qualified person available at the time and place of the reinspection or review of weighing.

[50 FR 45394, Oct. 31, 1985]

### § 800.129 Certificating reinspection and review of weighing results.

(a) *General.* Except as provided in paragraph (a)(1) of this paragraph, official certificates shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (b)(2) of this section, only the result of the reinspection service shall be reported.

(1) *Results of material portion sublots.* When results of a reinspection on a material portion do not detect a material error, they shall be averaged with the original inspection results. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The averaged inspection results shall replace the original inspection results recorded on the official inspection log. Reinspection results shall replace the original inspection results recorded on the official inspection log if a material error is detected. No certificates will be issued unless requested by the applicant or deemed necessary by official personnel.

(2) *Reporting review of weighing results.* When the review of weighing service results indicate that the original weighing results were correct, the applicant will be notified in writing. When the original weighing service results are incorrect, a corrected weight certificate or, if applicable, a corrected combination inspection and Class X weight certificate will be issued according to the provisions of § 800.165.

(b) *Required statements on reinspection certificates.* Each reinspection certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each reinspection certificate must clearly show (i) the term ''Reinspection'' and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the reinspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the reinspection certificate shall show a statement indicating that the reinspection results are based on official grade, or official factors, or official criteria and that all other results are those of the original service.

(3) If the superseded certificate is in the custody of the agency or field office, the superseded certificate shall be marked ''Void.'' If the superseded certificate is not in the custody of the agency or field office at the time the reinspection certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the reinspection certificate.

(4) As of the date of issuance of the official certificate, the superseded certificate for the original service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (a)(1) of this section, the reinspection certificate shall show a statement indicating that the results replaced the original results and that the reinspection certificate is not valid for trading purposes.

[50 FR 45394, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

APPEAL INSPECTION SERVICES

## § 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services, except as provided for in § 800.86(c)(5). When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

(b) *Kind and scope of request.* An appeal inspection service is limited to the kind and scope of the original or reinspection service; or, in the case of a Board Appeal inspection service, the kind and scope of the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request an appeal or Board Appeal inspection of a specific factor(s), official grade and factors, or official criteria. In addition, appeal and Board Appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013.)

[50 FR 45395, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990; 68 FR 61328, Oct. 28, 2003]

**§ 800.136 How to request appeal inspection services.**

(a) *General.* Requests shall be filed with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be filed with the Board of Appeals and Review or the field office that performed the appeal inspection. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel as specified in § 800.46. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation. An appeal inspection certificate will not be issued unless (1) documentation requested under § 800.46 has been submitted or (2) office personnel determine that sufficient information has been made available so as to perform the request. A record that sufficient information has been made available must be included in the record of the official service.

(b) *Filing requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests. Requests must be filed (1) before the grain has left the specified service point where the grain was located when the original inspection was performed, (2) no later than the close of business on the second business day following the date of the last inspection, and (3) before the identity of the grain has been lost. If a representative file sample as prescribed in § 800.82 is available, official personnel may waive the requirements pursuant to this paragraph. The requirements of paragraph (b)(1) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraphs (b)(2) and (b)(3) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(2) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the appeal inspection service.

(Approved by the Office of Management and Budget under control number 0580–0012)

[50 FR 45395, Oct. 31, 1985, as amended at 54 FR 5924, Feb. 7, 1989]

**§ 800.137 Who shall perform appeal inspection services.**

(a) *Appeal.* Appeal inspection services shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection services shall be performed only by the Board of Appeals and Review. The field office that performed the appeal inspection service will act as a liaison between the Board of Appeals and Review and the applicant.

[50 FR 45395, Oct. 31, 1985]

**§ 800.138 Conflict of interest.**

Official personnel cannot perform or participate in performing or issue an official certificate for an appeal inspection if they participated in the original inspection, reinspection, or, in the case of a Board appeal inspection, the appeal inspection service unless there is only one qualified person available at the time and place of the appeal inspection.

[50 FR 45395, Oct. 31, 1985]

**§ 800.139 Certificating appeal inspections.**

(a) *General.* Except as provided in paragraphs (b) of this section, official certificate shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (c)(2) of this section, only the results of the appeal inspection service shall be reported.

(b) *Results of material portion sublots.* When results of an appeal inspection performed by a field office or the Board of Appeals and Review on a material portion do not detect a material error, they shall be averaged with the previous inspection results recorded on

the official inspection log for the identified sample. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The appeal or Board appeal inspection result shall replace the previous inspection results recorded on the official inspection log for the identified sample if a material error is detected. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel.

(c) *Required statements.* Each appeal certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term ''Appeal'' or ''Board appeal'' and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the appeal inspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the appeal inspection certificate shall show a statement indicating that appeal or Board appeal inspection results are based on official grade, official factors, or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection results.

(3) Superseded certificates held by the Service shall be marked ''Void.'' If the superseded certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(4) As of the date of issuance of the appeal or Board appeal certificate, the superseded certificate for the original, reinspection, or appeal inspection service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (b) of this section, the appeal inspection certificate shall show a statement indicating that the results replace the original inspection, reinspection, or, in the case of a Board appeal, the appeal inspection results and that the appeal inspection certificate is not valid for trading purposes.

(d) *Finality of Board appeal inspections.* A Board appeal inspection will be the final appeal inspection service.

[50 FR 45395, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

## OFFICIAL RECORDS AND FORMS (GENERAL)

SOURCE: Sections 800.145 through 800.159 appear at 50 FR 18986, May 6, 1985, unless otherwise noted.

### § 800.145 Maintenance and retention of records—general requirements.

(a) *Preparing and maintaining records.* The records specified in §§ 800.146–800.159 shall be prepared and maintained in a manner that will facilitate (1) the daily use of records and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions.

(b) *Retaining records.* Records shall be retained for a period not less than that specified in §§ 800.146–800.159. In specific instances, the Administrator may require that records be retained for a period of not more than 3 years in addition to the specified retention period. In addition, records may be kept for a longer time than the specified retention period at the option of the agency, the contractor, the approved scale testing organization, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.146 Maintenance and retention of records issued by the Service under the Act.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of the Act, regulations, the standards, any instructions issued by the Service, and all amendments and revisions thereto. These records shall be maintained until superseded or revoked.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of their delegation, designation, contract, or approval. These records consist of a copy of the delegation or designation documents, a copy of the current contract, or a copy of the notice of approval, respectively, and all amendments and revisions thereto. These records shall be maintained until superseded, terminated, revoked, or cancelled.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.148 Maintenance and retention of records on organization, staffing, and budget.

(a) *Organization.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their organization. These records shall consist of the following documents: (1) If it is a business organization, the location of its principal office; (2) if it is a corporation, a copy of the articles of incorporation, the names and addresses of officers and directors, and the names and addresses of shareholders; (3) if it is a partnership or an unincorporated association, the names and addresses of officers and members, and a copy of the partnership agreement or charter; and (4) if it is an individual, the individual's place of residence. These records shall be maintained for 5 years.

(b) *Staffing.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their employees. These records consist of (1) the name of each current employee, (2) each employee's principal duty, (3) each employee's principal duty station, (4) information about the training that each employee has received, and (5) related information required by the Service. These records shall be maintained for 5 years.

(c) *Budget.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their budget. These records consist of actual income generated and actual expenses incurred during the current year. Complete accounts for receipts from (1) official inspection, weighing, equipment testing, and related services; (2) the sale of grain samples; and (3) disbursements from receipts shall be available for use in establishing or revising fees for services under the Act. Budget records shall also include detailed information on the disposition of grain samples obtained under the Act. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.149 Maintenance and retention of records on licenses and approvals.

(a) *Licenses.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of licenses. These records consist of current information showing (1) the name of each licensee, (2) the scope of each license, (3) the termination date of each license, and (4) related information required by the Service. These records shall be maintained for the tenure of the licensee.

(b) *Approvals.* Agencies shall maintain complete records of approvals of weighers. These records consist of current information showing the name of each approved weigher employed by or at each approved weighing facility in the area of responsibility assigned to an agency or field office. These records shall be maintained for the tenure of the weigher's employment as an approved weigher.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.150 Maintenance and retention of records on fee schedules.

Agencies, contractors, and approved scale testing organizations shall maintain complete records on fee schedules. These records consist of (a) a copy of the current fee schedule; (b) in the case of an agency, data showing how the fees in the schedule were developed; (c) superseded fee schedules; and (d) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.151 Maintenance and retention of records on space and equipment.

(a) *Space.* Agencies shall maintain complete records on space. These records consist of (1) a description of space that is occupied or used at each location, (2) the name and address of the owner of the space, (3) financial arrangements for the space, and (4) related information required by the Service. These records shall be maintained for 5 years.

(b) *Equipment.* Agencies shall maintain complete records on equipment. These records consist of (1) the description of each piece of equipment used in performing official inspection or Class X or Class Y weighing services under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for equipment testing and the results of the testing, and (5) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.152 Maintenance and retention of file samples.

(a) *General.* The Service and agencies shall maintain complete file samples for their minimum retention period (calendar days) after the official function was completed or the results otherwise reported.

(b) *Minimum retention period.*

| | |
|---|---|
| (1) Trucks | |
| In | 3 |
| Out | 5 |
| (2) Railcars | |
| In | 5 |
| Out | 10 |
| (3) Barges (river) | |
| In | 5 |
| Out | 25 |
| (4) Ships and barges (lake or ocean) | |
| In | 5 |
| Out | 25 |
| Export (sublot samples) | 60 |
| (5) Bins and tanks | 3 |
| (6) Submitted samples | 3 |

Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

(c) *Special retention periods.* In specific instances, the Administrator may require that file samples be retained for a period of not more than 90 calendar days. File samples may be kept for a longer time than the regular retention period at the option of the Service, the agency, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.

Agencies and approved scale testing organizations shall maintain complete detailed official inspection work records, copies of official certificates, and equipment testing work records for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.154 Availability of official records.

(a) *Availability to officials.* Each agency, contractor, and approved scale testing organization shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours any records maintained under §§ 800.146–800.159.

(b) *Availability to the public*—(1) *Agency, contractor, and approved scale testing organization records.* The following official records will be available, upon request by any person, for public inspection during customary business hours: (i) Copies of the Act, the regulations, the standards, and the instructions; (ii) the delegation, designation, contract, or approval issued by the Service; (iii) organization and staffing records; (iv) a list of licenses and approvals; and (v) the approved fee schedule of the agency, if applicable.

(2) *Service records*—Records of the Service are available in accordance with the Freedom of Information Act (5 U.S.C. 552(a)(3)) and the regulations of the Secretary of Agriculture (7 CFR, part 1, subpart A).

(c) *Locations where records may be examined or copied*—(1) *Agency, contractor, and approved scale testing organization*

*records.* Records of agencies, contractors, and approved scale testing organizations available for public inspection shall be retained at the principal place of business of the agency, contractor, or approved scale testing and certification organization.

(2) *Service records.* Records of the Service available for public inspection shall be retained at each field office and at the headquarters of the Service in Washington, D.C.

### § 800.155 Detailed work records—general requirements.

(a) *Preparation.* Detailed work records shall be prepared for each official inspection, Class X or Class Y weighing, and equipment testing service performed or provided under the Act. The records shall (1) be on standard forms prescribed in the instructions; (2) be typed or legibly written in English; (3) be concise, complete, and accurate; (4) show all information and data that are needed to prepare the corresponding official certificates or official report; (5) show the name or initials of the individual who made each determination; and (6) show other information required by the Service to monitor or supervise the service provided.

(b) *Use.* Detailed work records shall be used as a basis for (1) issuing official certificates or official forms, (2) approving inspection and weighing equipment for the performance of official inspection or Class X or Class Y weighing services, (3) monitoring and supervising activities under the Act, (4) answering inquiries from interested persons, (5) processing complaints, and (6) billing and accounting. These records may be used to report results of official inspection or Class X or Class Y weighing services in advance of issuing an official certificate.

(c) *Standard forms.* The following standard forms shall be furnished by the Service to an agency: Official Export Grain Inspection and Weight Certificates (singly or combined), official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. Other forms used by an agency in the performance of official services, including certificates, shall be furnished by the agency.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.156 Official inspection records.

(a) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, consist of one or more pan tickets as prescribed in the instructions. Activities that are performed as a series during the course of an inspection service may be recorded on one pan ticket or on separate pan tickets. The original copy of each pan ticket shall be retained by the agency or field office that performed the inspection.

(b) *Inspection logs.* The record of an official inspection service for grain in a combined lot and shiplot shall include the official inspection log as prescribed in the instructions. The original copy of each inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency, one copy of the inspection log shall be promptly sent to the appropriate field office.

(c) *Other forms.* Any detailed test that cannot be completely recorded on a pan ticket or an inspection log shall be recorded on other forms prescribed in the instructions. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, an approved abbreviation may be used.

(d) *File samples*—(1) *General.* The record for an official inspection service based, in whole or in part, on an examination of a grain in a sample shall include one or more file samples as prescribed in the instructions.

(2) *Size.* Each file sample shall consist of an unworked portion of the official sample or warehouseman's sample obtained from the lot of grain and shall be large enough to permit a reinspection, appeal inspection, or Board appeal inspection for the kind and scope of inspection for which the sample was obtained. In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.

(3) *Method.* Each file sample shall be retained in a manner that will preserve

the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained according to the instructions.

(4) *Uniform system.* To facilitate the use of file samples, agencies shall establish and maintain a uniform file sample system according to the instructions.

(5) *Forwarding samples.* Upon request by the supervising field office or the Board of Appeals and Review, each agency shall furnish file samples (i) for field appeal or Board appeal inspection service, or (ii) for monitoring or supervision. If, at the request of the Service, an agency locates and forwards a file sample for an appeal inspection, the agency may, upon request, be reimbursed at the rate prescribed in § 800.71 by the Service.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.157 Official weighing records.

(a) *Scale ticket, scale tape, or other weight records.* In addition to the official certificate, the record for each Class X or Class Y weighing service shall consist of a scale ticket, a scale tape, or any other weight record prescribed in the instructions.

(b) *Weighing logs.* The record of a Class X or Class Y weighing service performed on bulk grain in a combined lot or bulk shiplot grain shall include the official weighing log as prescribed in the instructions. The original copy of each weighing log shall be retained by the field office or agency that performed the weighing.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.158 Equipment testing work records.

The record for each official equipment testing service or activity consists of an official equipment testing report as prescribed in the instructions. Upon completion of each official equipment test, one or more copies of the completed testing report may, upon request, be issued to the owner or operator of the equipment. The testing report shall show the (a) date the test was performed, (b) name of the organization and personnel that performed the test, (c) names of the Service employees who monitored the testing, (d) identification of equipment that was tested, (e) results of the test, (f) names of any interested persons who were informed of the test results, (g) number or other identification of the approval tag or label affixed to the equipment, and (h) other information required by the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.159 Related official records.

(a) *Volume of work report.* Field offices and agencies shall prepare periodic reports showing the kind and the volume of inspection and weighing services that they performed. The report shall be prepared and copies shall be submitted to the Service according to the instructions.

(b) *Record of withdrawals and dismissals.* Field offices and agencies shall maintain a complete record of requests for official inspection or weighing services that are withdrawn by the applicant or that are conditionally withheld or dismissed. The record shall be prepared and maintained according to the instructions.

(c) *Licensee record.* Licensees, including licensed warehouse samplers, shall (1) keep the license issued to them by the Service and (2) keep or have reasonable access to a complete record of the Act, the standards, the regulations, and the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

## OFFICIAL CERTIFICATES

SOURCE: Sections 800.160 through 800.166 appear at 50 FR 45396, Oct. 31, 1985, unless otherwise noted.

### § 800.160 Official certificates; issuance and distribution.

(a) *Required issuance.* An official certificate shall be issued for each inspection service and each weighing service except as provided §§ 800.84, 800.129, and 800.139 and paragraph (b) of this section.

(b) *Distribution*—(1) *General*—(i) *Export.* The original and at least three copies of each certificate will be distributed to the applicant or applicant's order. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(ii) *Nonexport.* The original and at least one copy of each certificate will be distributed to the applicant or to the applicant's order. In the case of inbound trucklot grain, one copy shall be delivered by the applicant to the person who owned the grain at the time of delivery. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(iii) *Local movements of shiplot grain.* When shiplot grain is offered for inspection as a single lot and a portion of the lot is returned to the elevator, certificates representing the inspection service shall not be issued unless (A) requested by the applicant or (B) deemed necessary by official personnel.

(2) *Reinspection and appeal inspection services.* In addition to the distribution requirements of paragraph (b) of this section, one copy of each reinspection or appeal inspection certificate shall be distributed to each interested person of record or the interested person's order and to the agency or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies may be assessed according to the fee schedules established by the agency or the Service.

(c) *Prompt issuance.* The results of the inspection or weighing service shall be reported to the applicant on the date the inspection or weighing service is completed. Certificates shall be issued as soon as possible, but no later than the close of business on the next business day. Upon request of an agency or a field office, the requirements of this paragraph may be waived by the Service when results have been reported before issuing the certificate.

(d) *Who may issue certificates*—(1) *Authority.* Certificates for inspection or Class X weighing services may be issued only be official personnel who are specifically licensed or authorized to perform and certify the results reported on the certificate. Certificates for Class Y weighing services may be issued only by individuals who are licensed or authorized or are approved to perform and certify the results.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the service is performed by one person, the certificate should be issued by that person. If the service is performed by two or more persons, the certificate should be issued by the person who made the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the service being certificated.

(e) *Name requirement.* On export certificates, the typewritten name and signature of the individual issuing the certificate shall appear on the original and all copies. On all other certificates, the name or signature of the individual issuing the certificate shall appear on the original and all copies. Upon request by the applicant, the name and signature may be shown on all other certificates.

(f) *Authorization to affix names*—(1) *Requirements.* The name or signature of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. An agent affixing the name and signature shall (i) be employed by the agency or Service; (ii) have been designated to affix names and signatures; and (iii) hold a power of attorney from the person whose name and signature will be affixed. The power of attorney shall be on file with the agency or Service.

(2) *Initialing.* When a name or signature is affixed by an authorized agent, the initials of the agent shall appear directly below or following the signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested

party, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification after dismissal.* An official certificate cannot be issued for a service after the request has been withdrawn or dismissed.

(Approved by the Office of Management and Budget under control number 0580–0011)

[50 FR 45396, Oct. 31, 1985, as amended at 57 FR 11428, Apr. 3, 1992]

### § 800.161 Official certificate requirements.

(a) *General.* Official certificates shall show the information and statements required by § 800.161 through § 800.165 and the instructions. The Administrator shall approve any other information and statements reported. Information shall be reported in a uniform, accurate, and concise manner, be in English, be typewritten or handwritten in ink, and be clearly legible.

(b) *Required format.* Official certificates shall be uniform in size, shape, color, and format and conform to requirements prescribed in the instructions. Upon request and for good cause, the Service may approve special design certificates. All information and statements shall be shown on the front of the certificate, except that on domestic grain certificates, (1) approved abbreviations for official factors and official criteria, with their meanings, may be shown on the back and (2) the identification of carriers or containers in a combined-lot inspection may be shown on the back if ample space is not available on the front. When information is recorded on the back of the certificate, the statement ''See reverse side'' must be shown on the front.

(c) *Required information.* Each official certificate shall show the following information in accordance with the instructions: (1) For an agency issuing export certificates or the Federal Grain Inspection Service, ''United States Department of Agriculture—Federal Grain Inspection Service;'' (2) for a designated agency, the name of the agency, as applicable; (3) captions identifying the kind of service; (4) a preprinted serial number and lettered prefix; (5) ''original'' or ''copy,'' as applicable; (6) ''divided lot,'' ''duplicate,'' or ''corrected,'' as applicable; (7) the identification of the carrier or container; (8) the date the service was performed; (9) the date and method of sampling; (10) the kind of movement and the level of service performed; (11) the grade and kind or ''Not Standardized Grain,'' as applicable; (12) the results of the service performed; (13) the location of the issuing office; (14) the location of the grain when the service was performed; (15) a space for remarks; (16) whether a reinspection or appeal inspection service was based in whole or in part on file samples when file samples are used; (17) a statement reflecting the results of a stowage examination, when applicable; (18) seal records, when applicable; and (19) the name of the person issuing the certificate.

(d) *Required statements.* Each official certificate shall include the following statements according to the instructions: (1) A statement that the certificate is issued under the authority of the United States Grain Standards Act; (2) a nonnegotiability statement; (3) a warning statement; and (4) a statement referencing the certificate number and date. Each official certificate for an official sample-lot inspection service shall include a caption ''U.S. Grain Standards Act'' and a USDA-FGIS shield ghosted across the front. Each official certificate for a warehouseman's sample-lot inspection, a submitted sample inspection, or Class Y weighing service shall include a statement that the certificate does not meet the requirements of section 5 of the Act of warehouseman's sample-lot inspection, the word ''QUALIFIED;'' for submitted sample inspections, the words ''Not Officially Sampled;'' for Class Y weighing, the words ''Class Y Weighing'' screened across the front.

(e) *Permissive information and statements*—(1) *Certificates.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on the certificate if the information or statements have been approved in the instructions or on a case-by-case basis by the Administrator.

(2) *Letterhead.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on letterhead

stationary of the Service or an agency when (i) ample space is not available for reporting the information or statements on the certificate, (ii) letterhead stationary is determined to be more suitable than the official certificate, and (iii) the certificate is referenced on the letterhead stationary and distributed according to § 800.160. Letterhead stationary of the Service shall be used for all export grain.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.162 Certification of grade; special requirements.

(a) *General.* Except as provided in paragraph (c) of this section, each official certificate for grade shall show:

(1) The grade and factor information required by the Official U.S. Standards for Grain;

(2) The test weight of the grain, if applicable;

(3) The moisture content of the grain;

(4) The results for each official factor for which a determination was made;

(5) The results for each official factor that determined the grade when the grain is graded other that U.S. No. 1;

(6) Any other factor information considered necessary to describe the grain; and

(7) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official grade factors defined in the Official United States Standards for Grain for the type of grain being inspected.

(c) Test weight for canola and soybeans. Official canola inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel only upon request by the applicant. Official soybean inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel unless the applicant requests that test weight not be determined. Upon request, soybean test weight results will not be determined and/or reported on the official certificate.

(d) *Aflatoxin test for corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs (a), (b), and (c) of this section, the official aflatoxin test results if required under § 800.15(b).

(Approved by the Office of Management and Budget under control number 0580–0011)

[50 FR 45396, Oct. 31, 1985, as amended at 52 FR 24437, June 30, 1987; 57 FR 2439, Jan. 22, 1992; 57 FR 3273, Jan. 29, 1992; 57 FR 56439, Nov. 30, 1992; 71 FR 52405, Sept. 6, 2006]

### § 800.163 Divided-lot certificates.

(a) *General.* When shiplot grain is offered for inspection or Class X weighing as a single lot and is certificated as a single lot, the applicant may exchange the official certificate for two or more divided-lot certificates. This applies to original inspection, reinspection, appeal inspection, Board appeal inspection, and Class X weighing services.

(b) *Application.* Requests for divided-lot certificates shall be made (1) in writing; (2) by the applicant who filed the inital request; (3) to the office that issued the outstanding certificate; (4) within 5 business days of the outstanding certificate date; and (5) before the identity of the grain has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show an aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall (1) be in the custody of the agency or the Service; (2) be marked ''Void;'' and (3) show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show (1) a statement indicating the grain was inspected or weighed as an undivided lot; (2) the terms ''Divided Lot-Original,'' and the copies shall show ''Divided Lot-Copies;'' (3) the same serial number with numbered suffix (for example, 1764–1, 1764–2, 1764–

3, and the like); and (4) the quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 800.160.

(g) *Limitations.* No divided-lot certificate can be issued (1) for grain in any shipment other than shiplot grain inspected or weighed as a single lot or (2) for an export certificate which has been superseded by another export certificate. After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(h) *Use of superseded certificate prohibited.* As of the date of the divided-lot certificate, the superseded certificate will be void and shall not be used or represent the grain.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.164 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed: (1) in writing; (2) by the applicant who requested the service covered by the lost or destroyed certificate; and (3) with the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show (1) the terms ''Duplicate-Original'' and the copies shall show ''Duplicate-Copies'' and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 800.160.

(d) *Limitations.* Duplicate certificates will not be issued for certificates that have been superseded.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.165 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates shall be verified by the individual whose name or signature is shown on the certificate, or by the authorized agent who affixed the name or signature. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance*—(1) *Export certificates.* No corrections, erasures, additions, or other changes can be made to an export certificate. If any error is found prior to issuance, a new certificate shall be prepared and issued and the incorrect certificate marked ''Void.''

(2) *Other than export certificates.* No corrections, erasures, additions, or other changes shall be made to other than export certificates which involve identification, grade, gross, tare, or net weight. If errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked ''Void.'' Otherwise, errors may be corrected provided that (i) the corrections are neat and legible, (ii) each correction is initialed by the individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance*—(1) *General.* If errors are found on a certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show (i) the terms ''Corrected-Original'' and ''Corrected-Copy;'' (ii) a statement identifying the superseded certificate and the corrections; (iii) a statement indicating the superseded certificate was not

surrended if the incorrect certificate was not surrendered; and (iv) a new serial number. In addition, the incorrect certificate shall be marked ''Void'' when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

(f) *Use of superseded certificate prohibited.* As of the date of issuance of the corrected certificate, the superseded certificate will be void and shall not be used to represent the grain.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 800.166 Reproducing certificates.

Official certificates may be photo copied or similarly reproduced.

(Approved by the Office of Management and Budget under control number 0580–0011)

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

### § 800.170 When a license or authorization or approval is required.

(a) *Requirement.* (1) Any individual who performs or represents that he or she is licensed or authorized to perform any or all inspection or Class X weighing services under the Act must be licensed or authorized by the Service to perform each service. (2) Any individual who performs or represents that he or she is licensed or authorized, or an approved weigher, to perform Class Y weighing services under the Act must be licensed or authorized, or approved, by the Service to perform this service.

(b) *Excepted activities.* A license or authorization, or approval for weighing, under the Act and regulations is not required for (1) opening or closing a carrier or container of grain, or transporting or filing official samples, or similar laboring functions; (2) typing or filing official inspection and weighing certificates or other official forms or performing similar clerical functions; (3) performing official equipment testing functions with respect to official inspection equipment; (4) performing inspection, weighing, or scale testing functions that are not conducted for the purposes of the Act; or (5) performing scale testing functions by a State or municipal agency or by the employees of such agencies.

(c) *30-day waiver.* A prospective applicant for a license as a sampler, inspection technician, or weighing technician may, for a period of time not to exceed 30 calendar days, help perform those official sampling, inspection, or Class X or Class Y weighing services for which the applicant desires to be licensed, under the direct physical supervision of an individual who is licensed to perform the services. The supervising individual shall be fully responsible for each function performed by the prospective applicant and shall initial any work form prepared by the prospective applicant.

(d) *No fee by Service.* No fee will be assessed by the Service for licensing an individual employed by an agency or contractor.

(e) *Fee by agency.* At the request of the Service, an agency may help examine an applicant for a warehouse sampler's license for competency and may assess a fee in accordance with the provisions of § 800.70. The fee shall be paid by the applicant or by the elevator that employs the applicant.

(Secs. 9, 18, Pub. L. 94–582, 90 Stat. 2875 and 2884 (7 U.S.C. 79a and 87e))

[45 FR 15810, Mar. 11, 1980, as amended at 46 FR 30325, June 5, 1981]

### § 800.171 Who may be licensed or authorized.

(a) *Prohibitions.* No person may be licensed or authorized who has a conflict of interest as defined in section 11 of the Act or specified in § 800.187.

(b) *Exceptions to prohibitions*—(1) *Conflict by agency.* An employee of an agency that has a conflict of interest that is waived by the Administrator under section 11(b)(5) of the Act may be licensed: *Provided,* That the employee has no conflict of interest other than the agency conflict of interest.

(2) *Warehouse samplers.* A qualified employee of an elevator may be licensed to perform specified sampling services under the Act in accordance with the provisions of § 800.174(a)(2).

(c) *General qualifications*—(1) *Inspection and weighing.* To obtain a license to perform inspection or weighing services under the Act, an individual must

be employed by an agency to perform the services and must otherwise be found competent in accordance with this section and § 800.173.

(2) *Specified technical services.* To obtain a license to perform specified sampling, inspection testing, weighing, and similar services under the Act, an individual must (i) be employed by an agency to perform the services, or (ii) enter into or be employed under a contract with the Service to perform the services, and (iii) otherwise be found competent in accordance with this section and § 800.173.

(3) *Warehouse sampler.* To obtain a warehouse sampler's license, an applicant must be employed by an elevator to perform sampling services and otherwise be found competent in accordance with this section and § 800.173.

(4) *Requirements.* To be considered competent, an individual must (i) meet the qualifications specified in § 800.173; and (ii) have available the equipment and facilities necessary to perform the services for which the individual is to be licensed.

(d) *Competency determinations*—(1) *Agency samplers and technicians.* The competency of an applicant for a license as a sampler, inspection technician, or weighing technician shall be determined by (i) the chief inspector or the chief weighmaster, as applicable, of the agency that employs the applicant or, in the case of a warehouse sampler, the agency that is assigned the area in which the elevator that employs the sampler is located, and (ii) the field office supervisor.

(2) *Inspectors, weighers, contract samplers, and technicians.* The competency of an applicant for a license as an inspector or weigher or any license issued under the terms of a contract with the Service shall be determined by the Service.

(3) *Examinations.* A determination of competency of an applicant for a license shall include an evaluation of the results of examinations or reexaminations under § 800.173.

[45 FR 15810, Mar. 11, 1980, as amended at 49 FR 36072, Sept. 14, 1984]

### § 800.172 Applications for licenses.

(a) *General.* An application for a license, the renewal of a license, or the return of a suspended license shall be made to the Service on forms furnished by the Service. Each application shall (1) be in English, (2) be typewritten or legibly written in ink, (3) show all information prescribed by the application form, and (4) be signed by the applicant.

(b) *Additional information.* An applicant shall furnish any additional information considered necessary by the Service for consideration of an application.

(c) *Withdrawal.* An application for a license may be withdrawn by an applicant at any time.

(d) *Review of applications*—(1) *General procedure.* Each application shall be reviewed to determine whether the applicant and the application comply with the Act and the regulations.

(2) *Application and applicant in compliance.* If it is determined that the applicant and the application comply with the Act and the regulations, the requested license shall be granted.

(3) *Application not in compliance.* If an application does not comply with this section and the noncompliance prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit any needed information. If the needed information is not submitted by the applicant within a reasonable time, the application may be dismissed.

(4) *Applicant not in compliance.* If it is determined that an applicant does not comply with the provisions of the Act and §§ 800.171, 800.173, and 800.187 at the time the application is submitted, the applicant shall be provided an opportunity to comply. If the applicant cannot comply within a reasonable period of time, the application shall be dismissed.

(e) *Procedure for dismissal.* If a dismissal involves an application for a renewal of a license or for the return of a suspended license, the dismissal shall be performed in accordance with the provisions of § 800.179. All other dismissals shall be performed by promptly notifying the applicant and the employer

of the applicant of the reasons for the dismissal.

(Approved by the Office of Management and Budget under control number 0580–0012)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

### § 800.173 Examinations and reexaminations.

(a) *General.* Applicants for a license and individuals who are licensed to perform any or all official inspection or Class X or Class Y weighing services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the official inspection or weighing functions for which they desire to be, or are, licensed.

(b) *Time and place of examinations and reexaminations.* Examinations or reexaminations under this section shall be conducted by official personnel designated by the Service and shall be given at a reasonable time and place in accordance with the instructions.

(c) *Scope of examinations and reexaminations.* Examinations or reexaminations may include oral or written tests on the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the procedures for the inspection and weighing of grain under the Act, the instructions, on-site performance evaluations, and vision or olfactory examinations.

(d) *Competency standards*—(1) *Inspection.* An individual may be found to be incompetent to perform official inspection services if the individual (i) has a color-vision deficiency; (ii) cannot meet the physical requirements necessary to perform the functions; (iii) cannot readily distinguish between the different kinds and classes of grain, or the different conditions in grain, including heating, musty, sour, insect infestation, and smut; (iv) cannot demonstrate a technical ability to operate grain sampling, testing, and grading equipment; (v) does not have a working knowledge of applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, and the instructions; (vi) cannot determine work-related mathematical computations; or (vii) cannot prepare legible records in English.

(2) *Weighing.* An individual may be found to be incompetent to perform Class X or Class Y weighing services under the Act if the individual (i) does not meet the requirements of paragraphs (d)(1)(ii), (v), (vi), and (vii) of this section or (ii) cannot demonstrate a technical ability to operate grain weighing equipment.

### § 800.174 Issuance and possession of licenses and authorizations.

(a) *Scope of licenses and authorizations.* Subject to the provisions of § 800.171, eligible individuals may be licensed or authorized by the Service to perform one or more services specified in this paragraph.

(1) *Official samplers.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized, as applicable, to perform or supervise the performance of stowage examinations, grain sampling, and related technical services and to issue official certificates for the services performed by them.

(2) *Licensed warehouse samplers.* Elevator or warehouse employees may be licensed to sample grain and perform stowage examinations. No elevator employee shall be licensed to (i) sample export grain for inspection under the Act, (ii) test or grade grain, or (iii) certify the results of any inspection service under the Act.

(3) *Official inspection technicians.* Individuals employed by an agency or the Service or employed under the terms of a contract with the Service may be licensed or authorized to perform or supervise the performance of stowage examinations, grain sampling, or all or specified noninterpretive laboratory-testing services and to issue official certificates for the services performed by them.

(4) *Official inspectors.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of stowage examinations, sampling, laboratory-testing, grading, and related services and to issue official certificates for the services performed by them.

(5) *Official weighing technicians.* Individuals who are employed by an agency

or the Service to observe the loading, unloading, and handling of grain that has been or is to be weighed under the Act may be licensed or authorized to perform and supervise the performance of grain handling and stowage examination services and to issue official certificates for the services performed by them.

(6) *Official weighers.* Individuals employed by an agency or the Service may be licensed or authorized to perform and supervise the performance of grain handling, stowage examination, official weighing (Class X), and supervision of weighing (Class Y), and related services and to issue official certificates for the services performed by them.

(7) *Authorized scale tester.* Individuals employed by the Service may be authorized to test and supervise the testing of scales used for Class X and Class Y weighing services and to approve and certify scales based on the results of these tests.

(b) *Condition for issuance*—(1) *Compliance with the Act.* Each license is issued on the condition that the licensee will, during the term of the license, comply with the Act, the regulations, and the instructions.

(2) *Possession of license.* Each license shall be the property of the Service, but each licensee shall have the right to possess the license subject to the provisions of §§ 800.173, 800.186, and 800.187.

(c) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate will be issued by the Service.

(d) *Retention of licenses.* Each license shall be retained by the holder of the license in a manner that the license can be examined upon request by service personnel.

### § 800.175 Termination of licenses.

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule for licenses.* Subject to the provisions of paragraph (a) of this section, licenses shall terminate on the last day of the month shown in the following schedule:

| Last names beginning with | Termination date |
|---|---|
| A | January. |
| B | February. |
| C, D | March. |
| E, F, G | April. |
| H, I, J | May. |
| K, L | June. |
| M | July. |
| N, O, P, Q | August. |
| S | September. |
| R, T, U, V | October. |
| W | November. |
| X, Y, Z | December. |

(c) *Termination notices.* The Service shall issue notice of termination to licensees and to their employers at least 60 days before the termination date. The notice shall (1) provide detailed instructions for requesting renewal of licenses; (2) state whether a reexamination will be required; and (3) if a reexamination will be required, show the nature and scope of the reexamination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed on or before the termination date.

(d) *Renewal of licenses.* Licenses that are renewed shall show the permanent license number, the date of renewal, and the word ''Renewed.''

(e) *Termination of suspended licenses.* Any suspension of a license, including voluntary suspension or suspension by change in employment, shall not affect the termination date of the license. If a licensee applies for renewal of the license prior to the termination date, the license will not terminate during the period of suspension.

(f) *Surrender of license.* Each license that is terminated, suspended, or canceled under the provisions of §§ 800.175 through 800.178 or is suspended, revoked, or not renewed for cause under the provisions of § 800.179 shall be promptly surrendered to the field office.

(g) *Marking terminated, canceled, or revoked licenses.* Each terminated, canceled, or revoked license surrendered to the Service shall be marked ''Canceled.''

**§ 800.176 Voluntary cancellation or suspension of licenses.**

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 800.172; a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

**§ 800.177 Automatic suspension of license by change in employment.**

A license issued to an individual who is employed by an agency shall be automatically suspended when the individual ceases to be employed by the agency. If the individual is reemployed by the agency or employed by another agency within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of §§ 800.172 and 800.173.

**§ 800.178 Summary revocation of licenses.**

Licenses may be summarily revoked upon a finding that the licensee has been convicted of any offense either prohibited by section 13 of the Act or prohibited by Title 18 of the United States Code, with respect to the performance of services under the Act.

**§ 800.179 Refusal of renewal, suspension, or revocation of licenses for cause.**

(a) *General.* A license may be suspended or revoked or may be refused renewal or return (if suspended) for causes prescribed in section 9 of the Act.

(b) *Procedure for summary action.* Under section 9 of the Act, any license may, without first affording the licensee (hereafter in this section the ''respondent'') an opportunity for a hearing, be summarily suspended pending final determination, whenever the action is considered to be in the best interest of the official inspection system. Such action shall be effective upon receipt of notice from the Service by the respondent. Within 30 calendar days after issuing a notice of summary action, the Service shall afford the respondent an opportunity for a hearing as provided under paragraph (c) of this section. Pending final determination, the Service may terminate the action if alternative employment arrangements satisfactory to the Service can be and are made for the respondent by the employer of the respondent.

(c) *Procedure for other than summary action.* Except as provided for in paragraph (a) of this section, before the Service refuses to renew, or suspends or revokes a license, or refuses to return a suspended license, the respondent shall be (1) notified of the proposed action and the reasons therefor, and (2) afforded (i) an opportunity to express his/her views on the proposed action in an informal manner, or (ii) at the request of the respondent, a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, part 1, subpart H).

**§ 800.180 Summary cancellation of licenses.**

A license may be summarily canceled when (a) the license has been under voluntary or automatic suspension for a period of 1 year and there has been no request for return of the license or a request for return of the license has been dismissed in accordance with § 800.172; or (b) the licensee has died or fails to surrender the license in accordance with § 800.175(f).

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

**§ 800.185 Duties of official personnel and warehouse samplers.**

(a) *General.* Official personnel and warehouse samplers shall, when performing official services or duties under the Act, comply with the Act, the regulations, and the instructions.

(b) *Inspection and weighing services.* Official personnel shall perform requested official inspection and Class X and Class Y weighing services (1) without discrimination, (2) as soon as practicable, and (3) in accordance with methods and procedures prescribed in the instructions.

(c) *Sealing carriers or containers.* Upon request, or in accordance with the instructions, official personnel shall (1) when feasible, affix security seals to doors, hatch covers, and similar openings on carriers or containers that contain grain that has been officially inspected or Class X or Class Y weighed under the Act and (2) show seal records on certificates and other official forms in accordance with the provisions of § 800.161.

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

(e) *Working materials.* Official personnel and warehouse samplers shall be responsible for maintaining a working knowledge of the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the instructions, and all amendments and revisions thereto.

(f) *Observation of services.* Official personnel and warehouse samplers shall permit any person (or the person's agent) who has a financial interest in grain that is being inspected or weighed under the Act, or in equipment that is being tested under the Act, to observe the performance of any or all official inspection, or Class X or Class Y weighing. Appropriate areas in the elevator may be specified by the Service in conjunction with the elevator management for observing each service. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the services, but shall not permit a close over-the-shoulder type of observation by the interested person or the person's agent.

(g) *Reporting violations.* Official personnel and warehouse samplers shall in accordance with the instructions promptly report (1) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions, and (2) information on any instructions which have been issued to them by any official personnel or other persons which are contrary to the Act, the regulations, or the instructions.

(h) *Related duties.* Official personnel and warehouse samplers shall, when practicable, assist in training other employees who desire to become licensed.

(i) *Instructions by Service.* Official personnel and warehouse samplers shall carry out all written instructions or oral directives issued to them by the Service and, upon request, inform the Service regarding inspection, weighing, or equipment testing services performed by them. Oral directives from the Service not found in written instructions shall be confirmed in writing, upon request.

(Approved by the Office of Management and Budget under control number 0580–0013)

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989; 68 19139, Apr. 18, 2003]

### § 800.186 Standards of conduct.

(a) *General.* Official personnel and warehouse samplers must maintain high standards of honesty, integrity, and impartiality to assure proper performance of their duties and responsibilities and to maintain public confidence in the services provided by them.

(b) *Prohibited conduct; official personnel and warehouse samplers.* No official personnel or warehouse sampler shall:

(1) Perform any official inspection, Class X or Class Y weighing, or equipment testing service unless licensed or authorized to do so;

(2) Engage in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Department or the Service;

(3) Report for duty in an intoxicated or drugged condition, or consume intoxicating beverages or incapacitating drugs while on duty;

(4) Smoke in prohibited areas in elevators or perform official services in an unsafe manner that could endanger official personnel working on or about the premises;

(5) Make unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department; and

(6) Refuse to testify or respond to questions in connection with official inquiries or investigations.

(7) Coerce or attempt to coerce any person into providing any special or undue benefit to official personnel, approved weighers, or warehouse samplers.

(c) *Prohibited conduct; official personnel.* In addition to the conduct prohibited by paragraph (b) of this section, no official personnel shall:

(1) Solicit contributions from other official personnel or warehouse samplers for an employee of the Service, or make such a contribution. Nothing in this paragraph shall preclude the occasional voluntary giving or acceptance of gifts of a nominal value on special occasions;

(2) Take any action that might (i) create the appearance of a loss of impartiality or (ii) adversely affect the confidence of the public in the integrity of the inspection, weighing, or equipment testing services performed under the Act;

(3) Except as provided in § 800.76(a), engage in any outside (unofficial) work or activity that:

(i) May impair their efficiency in performing official functions; or

(ii) Consists in whole or in part of unofficial acts of sampling, stowage examination, inspection testing, equipment testing, inspection, or weighing services similar to the official services for which the employing agency is designated; or

(iii) May result in the acquisition of property interests that could create a conflict of interest as defined in section 11 of the Act; or

(iv) May tend to bring criticism on or otherwise embarrass the Department or the Service;

(4) Issue to other official personnel, warehouse samplers, or approved weighers any instructions or directives inconsistent with the Act, the regulations, the Official U.S. Standards for Grain, or the instructions;

(5) Organize or help establish a general or specialized farm organization, or act as an officer or business agency in, recruit members for, or accept office space or contributions from such an organization;

(6) Advocate that any general or specialized farm organization better represents the interest of farmers than any other organization or individual, or recommend that the responsibilities of any government agency be carried out through a general or specialized farm organization. Nothing in paragraph (c)(5) of this section shall prevent official personnel from holding membership in a general or specialized farm organization or prohibit official personnel from participating in the operation of local groups or organizations that conduct government-authorized programs.

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44454, Sept. 29, 1983; 60 FR 65235, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998]

### § 800.187 Conflicts of interest

(a) *General.* Warehouse samplers are exempt from the conflict-of-interest provisions of this section.

(b) *What constitutes a gratuity.* For the purposes of these regulations, the term ''gratuity'' shall include any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not include (1) the occasional exchange of a cup of coffee or similar social courtesies of nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (2) the acceptance of unsolicited advertising material such as pencils, pens, and note pads of nominal value if the material is wholly free of any embarrassing or improper implications; and (3) the exchange of the usual courtesies in an obvious family or personal relationship (including those between official personnel and their parents, spouses, children, or close personal friends) when the circumstances

make it clear that the exchange is the result of the family or personal relationship, rather than a business or work relationship.

(c) *Conflicts.* In addition to the conflicts of interest prohibited by section 11 of the Act, the activities specified in this paragraph shall also be considered to be a conflict of interest. Accordingly, no official personnel shall, during the term of their license or authorization (including any period of suspension):

(1) Accept any gratuity.

(2) Accept any fee or charge or other thing of monetary value, in addition to the published fee or charge, for the performance of official inspection or weighing services under circumstances in which the acceptance could result, or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) an undertaking to give undue preferential treatment to any group or any person, or (iii) any other loss of independence or impartiality in the performance of official inspection or Class X or Class Y weighing services.

(3) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(4) Engage in the business by buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than a grower of grain, or in the disposition of inspection samples); or in the business of cleaning, treating, or fitting carriers or containers for transporting or storing grain; the merchandising for nonfarm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection or weighing equipment (other than buying or selling by official personnel of the equipment for use in the performance of their official services).

(5) Seek or hold any appointive or elective office in a grain industry organization or association. This provision does not apply to organizations of official inspectors or official weighers.

(6) Participate in any transaction involving the purchase or sale of corporate stocks or bonds, grain or grain-related commodities, or other property for speculative or income purposes if the transaction could reasonably be construed to interfere with the proper and impartial performance of official inspection for Class X or Class Y weighing services. Official personnel are not prohibited from (i) producing grain as a grower and selling the grain; (ii) making bona fide investments in governmental obligations, banking institutions, savings and loan associations, and other tangibles and intangibles that are clearly not involved in the production, transportation, storage, marketing, or processing of grain; or (iii) borrowing money from banks or other financial institutions on customary terms.

(d) *Reports of interests.* Official personnel shall report information regarding their employment or other business or financial interests which may be required by the Service.

(e) *Avoiding conflicts of interest.* Official personnel shall not acquire any financial interest or engage in any activity that would result in a violation of this § 800.187, or § 800.186, or section 11 of the Act and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(f) *Disposing of a conflict of interest*—(1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license and official personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants and official personnel who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist

and should not be excepted, failure to terminate the conflict of interest shall subject: (i) An applicant for a license to a dismissal of the application; (ii) An employee of the Service to disciplinary action; and (iii) A licensee to license revocation.

(Approved by the Office of Management and Budget under control number 0580–0012)

[45 FR 15810, Mar. 11, 1980, as amended at 48 FR 44453 and 44454, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

### § 800.188 Crop year, variety, and origin statements.

No official personnel shall certify or otherwise state in writing (a) the year of production of grain, including use of terms such as ''new crop'' or ''old crop''; (b) the place or geographical area where the grain was grown; or (c) the variety of the grain.

### § 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel and warehouse samplers who commit an offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act.

(b) *Administrative action*—(1) *Other than Service employees.* In addition to possible criminal prosecution, licensees and warehouse samplers are subject to administrative action in accordance with sections 9 and 14 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to disciplinary action by the Service.

## DELEGATIONS, DESIGNATIONS, APPROVALS, CONTRACTS, AND CONFLICTS OF INTEREST

AUTHORITY: Sections 800.195 through 800.199 were issued under secs. 8, 9, 10, 13, and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e.

### § 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official inspection, Class X, and Class Y weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which: (1) Were performing official inspection at an export port location under the Act on July 1, 1976, or; (2)(i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official service. A request for authority to operate as a delegated State shall show: (1) The export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (i) be filed with the Service not less than 90 calendar days before the desired effective date, and (ii) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and

criteria. If an application is dismissed, the Service shall notify the applicant promptly, in writing, of the reason(s) for the dismissal.

(f) *Responsibilities*—(1) *Providing official services.* Each delegated State shall be responsible for providing each official service authorized by the delegation at all export elevators at export port locations in the State. The State shall perform each official service according to the Act, regulations, and instructions.

(2) *Staffing, licensing, and training.* Delegated States shall employ official personnel on the basis of job qualifications rather than political affiliations. The State shall employ sufficient personnel to provide the services normally requested in an accurate and timely manner. The State shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. The State shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(3) *Rotation of personnel.* Where feasible, each delegated State shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighting systems.

(4) *Supervision.* The State and its officials shall be responsible for the actions of the official personnel employed by the State, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities in the State. The State shall supervise official activities according to the Act, regulations, and instructions and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each State shall report to the Service information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to State personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, regulations, or instructions.

(5) *Conflict of interest.* (i) *General.* The delegated State and any commissioner, director, employee, or other related person or entity shall not have a conflict of interest, as defined in section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d).

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

(6) *Fees.* The delegated State shall charge fees according to § 800.70.

(7) *Facilities and equipment.* (i) *General.* The laboratory and office facilities of each delegated State shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each delegated State shall test the equipment that it uses for official services according to the instructions.

(8) *Security.* Each delegated State shall provide sufficient security to assure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each delegated State shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for: (i) Recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145 through 800.159.

(g) *Termination*—(1) *Automatic termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after

due shall result in the automatic termination of the delegation. The delegation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(2) *Voluntary cancellation.* A State may request that its delegation be canceled by giving 90 days written notice to the Service.

(3) *Revocation.* (i) *Without hearing.* The Administrator may revoke the delegation of a State without first affording the State opportunity for a hearing. Unless otherwise provided, the revocation shall be effective when the State receives a notice from the Service regarding the revocation and the reason(s) therefor.

(ii) *Informal conference.* At the discretion of the Administrator, before the delegation of a State is revoked under paragraph (g)(3)(i) of this section, the Service may (A) notify the State of the proposed action and the reason(s) therefor, and (B) afford the State an opportunity to express its views in an informal conference before the Administrator.

(h) *Provision of services following termination.* If a State's delegation is terminated, official services at the export port locations in the State shall be provided by the Service.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0012; paragraphs (f)(2) and (f)(4) were approved under control number 0580–0011)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18988, May 6, 1985; 54 FR 5924, Feb. 7, 1989; 60 FR 65236, Dec. 19, 1995]

### § 800.196 Designations.

(a) *General.* Eligible persons or governmental agencies may be designated to perform official services (excluding appeal inspection) within a specified area (other than export port locations).

(b) *Restrictions*—(1) *General.* If official inspection services are performed in an area by a designated agency, Class X and Class Y weighing services in that area may be performed only by the designated agency if the agency applies for designation to provide weighing services and is found qualified by the Service. If the agency designated to provide official inspection services is found not qualified or does not apply, the Class X and Class Y weighing services may be performed by another available agency that is found qualified and is designated by the Service, or the official services may be performed by the Service.

(2) *Interim authority.* (i) *By agency.* A designated agency may perform official services outside its assigned area on an interim basis when authorized by the Service.

(ii) *By Service.* Official inspection services and/or Class X and Class Y weighing services may be performed by the Service in an area (other than export port locations) on an interim basis in accordance with sections 7(h) and 7A(c) of the Act.

(c) *Who can apply.* Any State or local governmental agency or any person may apply, subject to sections 7 and 7A of the Act, to the Service for designation as an official agency to perform official inspection services (excluding appeal inspection) and/or Class X and Class Y weighing services in a given area (other than export port locations) in the United States.

(d) *When and how to apply.* An application for designation should be filed with the Service, according to the provisions of the FEDERAL REGISTER notice which requests applicants for designation to perform official services in existing or new geographic areas. The application for designation: (1) Shall be submitted on a form furnished by the Service; (2) shall be typewritten or legibly written in English; (3) shall show or be accompanied by documents which show all information requested on the form, or otherwise required by the Service; and (4) shall be signed by the applicant or its chief operating officer.

(e) *Review of conditions and criteria for designation*—(1) *Application.* Each application for a designation shall be reviewed to determine whether it complies with paragraph (d) of this section. If an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. When an

application is dismissed, the Service shall notify the applicant, in writing, of the reason(s) for the dismissal.

(2) *Applicant.* Each applicant for authority to operate as as designated agency shall be reviewed to determine whether the applicant meets the conditions and criteria contained in sections 7(f)(1)(A) and (B) of the Act, § 800.199 of the regulations, and paragraph (g) of this section. The requested designation may be granted if the Service determines that: (i) The requested action is consistent with the need for official services; (ii) the applicant meets the conditions and criteria specified in the Act and regulations; and (iii) the applicant is better able than any other applicant to provide official services.

(f) *Area of responsibility*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

(2) *Amending.* A request for an amendment to an assigned area of responsibility shall (i) be submitted to the Service in writing; (ii) specify the change desired; (iii) be signed by the applicant or its chief operating officer; and (iv) be accompanied by the fee prescribed by the Service. The assigned area may be amended if the Service determines that the amendment is consistent with the provisions and objectives of the Act, regulations, and instructions. Upon a finding of need, the Service may initiate action to change an assigned area of responsibility.

(3) *Specified service points.* An agency may change its specified service points by notifying the Service in advance. Interested persons may obtain a list of specified service points within an agency's area of responsibility by contacting the agency. The list shall include all specified service points and shall identify each specified service point which operates on an intermittent or seasonal basis.

(g) *Responsibilities*—(1) *Providing official services.* Insofar as practicable, each agency shall be responsible for providing at all locations in its assigned area each service authorized by the designation. An agency may, subject to Service approval, make arrangements with a neighboring agency to provide official services requested infrequently. The agency shall perform all official services according to the Act, regulations, and instructions in effect at the time of designation or which may be promulgated subsequently.

(2) *Fees.* The agency shall charge fees according to § 800.70.

(3) *Staffing, licensing, and training.* (i) *General.* The agency shall employ sufficient personnel to provide the official services normally requested in an accurate and timely manner. Each agency shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. Each agency shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(ii) *State agencies.* State agencies shall employ official personnel on the basis of job qualifications rather than political affiliations.

(4) *Rotation of personnel.* Where feasible, each agency shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(5) *Supervision.* The agency and its officials shall be responsible for the actions of the official personnel employed by the agency, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities at the agency. The agency shall supervise official activities, in accordance with the Act, regulations, and instructions, and shall take action necessary to ensure that

its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or instructions. Each agency shall report to the responsible field office information which shows or may show a violation of any provision of the Act, regulations, or instructions and information on any instructions which have been issued to agency personnel by Service personnel or by any other person which are inconsistent with the Act, regulations, or instructions.

(6) *Conflict of interest.* (i) *General.* Each agency and any officer, director, stockholder, employee, or other related entity shall not have a conflict of interest, as defined in Section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d). The agency shall advise the Service immediately of any proposed change in name, ownership, officers or directors, or control of the agency and, if a trust, any change affecting the trust agreement.

(ii) *Unofficial activities.* Except as provided in § 800.76(a), the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

(7) *Facilities and equipment.* (i) *General.* The laboratory and office facilities of each agency shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each agency shall test the equipment it uses for official services according to the instructions.

(8) *Security.* Each agency shall provide sufficient security to ensure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each agency shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145 through 800.159.

(h) *Termination and renewal*—(1) *Triennial*—(i) *Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 3 years after the effective date of the designation. A notice of triennial termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

(ii) *Renewal.* Designations may be renewed, upon application, in accordance with criteria and procedures for designation prescribed in section 7(f) of the Act and this section of the regulations. The Administrator may decline to renew a designation if: (A) The requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and instructions, of (B) the Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation.* (i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that: (A) The agency has failed to meet one or more of the criteria

specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or instructions, or (B) has been convicted of any violation of other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this paragraph as the ''respondent'') an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent's receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall afford the respondent an opportunity for a hearing under paragraph (h)(4)(iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of the section, before the Service revokes or suspends a designation, the respondent shall be: (A) Notified by the Service of the proposed action and the reason(s) therefor, and (B) afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR part 1, subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to arrange for a replacement agency. If a qualified replacement agency cannot be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

(Approved by the Office of Management and Budget under control number 0580–0013)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985; 54 FR 5924, Feb. 7, 1989; 60 FR 65236, Dec. 19, 1995; 63 FR 45677, Aug. 27, 1998; 68 FR 19139, Apr. 18, 2003]

### § 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall: (1) Show or be accompanied by documents which show all information required by the Service; (2) certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and instructions applicable to such services; (3) be accompanied by the fee prescribed in § 800.71; and (4) be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination*—(1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension or revocation of approval.* (i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system. A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an opportunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580–0012)

[49 FR 30915, Aug. 2, 1984, as amended at 54 FR 5924, Feb. 7, 1989]

## § 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an occasional basis: (1) Specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and (2) monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions*—(1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

(3) *Monitoring services.* Agencies, employees of agencies, organizations, employees of organizations, and other persons that regularly provide official services to persons who export grain from the United States are eligible to enter into a contract with the Service to perform monitoring services on export grain in foreign ports only if they are under Service employees' direct supervision during monitoring activities.

(c) *When and how to apply.* An application for a contractual arrangement shall: (1) Be typewritten or legibly written in English; (2) conform to the invitation to bid or other instructions issued by the Service or be filed on a form furnished by the Service; (3) show or be accompanied by documents which show any information requested by the Service; and (4) be signed by the applicant or its chief operating officer. All contracts shall be issued by the Department and shall follow Departmental procedures.

(d) *Termination and renewal.* A contract with the Service shall terminate annually unless othewise provided in

the contract. A contract may be renewed in accordance with Departmental procedures.

(e) *Cancellation.* A contract may, upon request of the governmental agency or person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract or Departmental procedures and regulations.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0580–0012)

[49 FR 30915, Aug. 2, 1984, as amended at 50 FR 18989, May 6, 1985; 54 FR 5924, Feb. 7, 1989]

### § 800.199 Conflict-of-interest provisions.

(a) *Meaning of terms.* For the purpose of this section, the following terms shall have the meaning given for them below:

(1) *Grain business.* The term ''grain business'' shall include (i) any entity that is engaged in the commercial transportation, storage, merchandising or other commercial handling of grain, which includes: The commercial buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain inspection and weighing equipment (other than the buying or selling by an agency or official personnel of the equipment for their exclusive use in the performance of their official inspection or Class X or Class Y weighing services); and the commercial use of official inspection and Class X or Class Y weighing services and (ii) any board of trade, chamber of commerce, grain exchange, or other trade group composed, in whole or in part, of one or more such entities.

(2) *Interest.* The term ''interest'' when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who resides in the immediate household of the individual.

(3) *Related.* The term ''related'' when used in reference to a business or governmental entity means an entity that owns or controls another entity, or is owned or controlled by another entity, or both entities are owned or controlled by another entity.

(4) *Substantial stockholder.* The term ''substantial stockholder'' means any person holding 2 per centum or more, or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest.

(b) *Prohibited conflicts of interest.* Unless waived on a case-by-case basis by the Administrator under section 11(b)(5) or the Act, the following conflicts of interest for a business or association are prohibited:

(1) *Agency and contractor.* No agency or contractor, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency or contractor, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or otherwise have any conflict of interest specified in § 800.187(b).

(2) *Grain business.* No grain business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by, or directly or indirectly have any stock or other financial interest in, any agency or contractor.

(3) *Stockholder in any agency or contractor.* No substantial stockholder in any agency or contractor shall be employed in or otherwise engaged in, or be a substantial stockholder in, any grain business, or directly or indirectly have any other kind of financial interest in any such business or otherwise have any conflict of interest specified in § 800.187(b).

(4) *Stockholder of a grain business.* No substantial stockholder in any grain business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in an incorporated agency or contractor.

(5) *Gratuity.* No person described in paragraph (b)(1) of this section shall give to or accept from a person described in paragraph (b)(2) of this section any gratuity, and no person described in paragraph (b)(2) of this section shall give to or accept from a person described in paragraph (b)(1) of this section any gratuity. A ''gratuity'' is defined in § 800.187(a).

(c) *Exempt conflicts of interest*—(1) *Agency and contractor.* An agency or contractor may use laboratory or office space or inspection, weighing, transportation, or office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the space or equipment is approved by the Service for the performance of onsite official services under the Act.

(2) *Financial institution.* A bona fide financial institution that has a financial relationship with one or more grain businesses or related entities may have a financial relationship with an agency, contractor, or related agency.

(3) *Grain business.* A grain business or related entity may furnish laboratory or office space or inspection, weighing, transportation, or office equipment for use by an agency, contractor, or field office when use of the space or equipment is approved by the Service for the performance of onsite official inspection or weighing services.

(d) *Disposition of a conflict of interest.* Upon being informed that a prohibited conflict of interest exists in the ownership, management, or operation of an agency and that remedial action is required, the agency shall take immediate action to resolve that conflict of interest and inform the Service of the action taken. An agency which believes that remedial action will cause undue economic hardship or other irreparable harm may request a waiver by forwarding to the Service a written statement setting forth the facts, the circumstances, and the reasons for requesting a waiver.

[49 FR 30915, Aug. 2, 1984]

SUPERVISION, MONITORING, AND EQUIPMENT TESTING

### § 800.215 Activities that shall be supervised.

(a) *General.* Supervision of the activities described in this section shall be performed in accordance with the instructions.

(b) *Administrative activities.* Administrative activities subject to supervision include but are not limited to (1) providing staffing, equipment, and facilities for performing authorized services; (2) dismissing requests for services and withholding requested services; (3) maintaining official records; (4) assessing and collecting fees; (5) rotating official personnel; (6) implementing instructions for (i) recruiting official personnel, (ii) training and supervising official and approved personnel, (iii) work performance and work production standards; and (7) supervising and monitoring.

(c) *Technical activities*—(1) *Equipment testing activities.* Equipment testing activities subject to supervision include but are not limited to (i) implementing (A) the equipment performance requirements in parts 801 and 802 of this chapter and (B) the instructions for the operation of equipment used under the Act and for performing equipment-testing activities and (ii) performing equipment-testing activities by official personnel or by approved scale testing organizations.

(2) *Inspection activities.* Inspection activities subject to supervision include but are not limited to (i) implementing (A) the Official U.S. Standards for Grain, (B) official criteria, and (C) instructions for the performance of inspection activities and (ii) performing stowage examination, sampling, laboratory testing, grading, and certification activities by official personnel.

(3) *Weighing activities.* Weighing activities subject to supervision include but are not limited to (i) implementing (A) uniform weighing procedures and (B) instructions for the performance of weighing activities and (ii) performing (A) stowage examination, sampling (sacked grain), weighing, and certification activities by official personnel and (B) by approved weighers of weighing activities.

(4) *Testing of prototype equipment activities.* Prototype or proposed equipment is tested to determine whether the equipment will improve the performance of activities under the Act. Prototype equipment-testing activities subject to supervision include but are not limited to (i) implementing instructions for the testing of prototype equipment, (ii) testing prototype equipment by official personnel, and (iii) approving or denying the use of prototype equipment for use under the Act.

### § 800.216 Activities that shall be monitored.

(a) *General.* Each of the administrative and technical activities identified in § 800.215 and the elevator and merchandising activities identified in this section shall be monitored in accordance with the instructions.

(b) *Grain merchandising activities.* Grain merchandising activities subject to monitoring for compliance with the Act include but are not limited to (1) failing to promptly forward an export certificate; (2) describing grain by other than official grades; (3) falsely describing export grain; (4) falsely making or using official certificates, forms, or marks; (5) making false quality or quantity representations about grain; and (6) selling export grain without a certificate of registration.

(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include but are not limited to (1) shipping export grain without inspection or weighing; (2) transferring grain from intercompany barges into an export elevator at an export port location without Class X weighing; (3) violating any Federal law with respect to the handling, weighing, or inspection of grain; (4) deceptively loading, handling, weighing, or sampling grain; and (5) exporting grain without a certificate of registration.

(d) *Recordkeeping activities.* Elevator and merchandising recordkeeping activities subject to monitoring for compliance with the Act include those that are identified in section 12(d) of the Act and § 800.25 of the regulations.

(e) *Other activities.* Other activities subject to monitoring for compliance with the Act include but are not limited to (1) resolving conflicts of interest by official agencies or their employees; (2) providing access to elevator facilities and records; (3) improperly influencing or interfering with official personnel; (4) falsely representing that a person is official personnel; (5) using false means in filing an application for services under the Act; and (6) preventing interested persons from observing the loading, Class X or Class Y weighing, or official sampling of grain.

[45 FR 15810, Mar. 11, 1980; 45 FR 55119, Aug. 18, 1980, as amended at 50 FR 2273, Jan. 16, 1985]

### § 800.217 Equipment that shall be tested.

(a) *General.* Testing of equipment and prototype equipment described in this section shall be performed in accordance with the instructions.

(b) *Inspection equipment.* Each unit of equipment used in the official sampling, testing, or grading of grain, or in monitoring the official inspection of grain, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy. For the purpose of this paragraph, diverter-type mechanical samplers used in obtaining warehouseman's samples shall be considered to be official inspection equipment used under the Act.

(c) *Weighing equipment.* Each unit of equipment used in the Class X or Class Y weighing of grain or in monitoring the Class X or Class Y weighing of grain, each related grain handling system, and each related computer system shall be examined to determine whether it is functioning in an approved manner. In addition, each unit of equipment for which official performance requirements have been established shall be tested for accuracy.

(d) *Prototype equipment*—(1) *At request of interested party.* Upon request of a financially interested party and with the concurrence of the Administrator, prototype grain inspection or weighing equipment may be tested by the Service for official use.

(2) *Determination by Service.* Upon a determination of need, the Service may develop, contract for, or purchase and test prototype grain inspection or weighing equipment for official use.

### §800.218 Review of rejection or disapproval of equipment.

Any person desiring to complain of a rejection or disapproval of equipment by official personnel or of any alleged discrepancy in the testing of equipment under the Act by official personnel or by approved scale testing organizations may file a complaint with the Service.

### §800.219 Conditional approval on use of equipment.

(a) *Approval.* Equipment that is in use under the Act on the effective date of this section shall be considered conditionally to have been adopted and approved by the Service.

(b) *Limitation on approval.* This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (1) should be rejected for official use, or (2) is not functioning in an approved manner, or (3) is not producing results that are accurate within prescribed tolerances, or (4) is producing results that are otherwise not consistent with the objectives of the Act.

## PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Sec.

801.1 Applicability.
801.2 Meaning of terms.
801.3 Tolerances for barley pearlers.
801.4 Tolerances for dockage testers.
801.5 Tolerances for diverter-type mechanical samplers.
801.6 Tolerances for moisture meters.
801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.
801.8 Tolerances for sieves.
801.9 Tolerances for test weight apparatuses.
801.10 [Reserved]
801.11 Related design requirements.
801.12 Design requirements incorporated by reference.

AUTHORITY: 7 U.S.C. 71–87k

SOURCE: 51 FR 7050, Feb. 28, 1986, unless otherwise noted.

### §801.1 Applicability.

The requirements set forth in this part 801 describe certain specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing inspection services under the Act.

### §801.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this part shall be considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms listed in the part 800 shall have the same meaning when the terms are used in this part 801. For the purposes of this part, the following terms shall have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on a pound of 16 ounces.

(2) *Barley pearler.* An approved laboratory device used to mechanically dehull kernels of barley or other grain.

(3) *Deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the individual test result from the equipment that is being tested and (ii) the reference standard or the individual test result from the standard (or National standard) equipment, as applicable.

(4) *Direct comparison method.* An equipment testing procedure wherein transfer standards are tested at the same time and place to compare the performance of two or more units of the same inpsection equipment. One unit of the equipment used in the test shall be standard inspection equipment. (See also sample exchange method).

(5) *Diverter-type mechanical sampler (primary).* An approved device used to obtain representative portions from a flowing stream of grain.

(6) *Diverter-type mechanical sampler (secondary).* An approved device used to subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(7) *Divider.* An approved laboratory device used to mechanically divide a

sample of grain into two or more representative portions.

(8) *Dockage tester.* An approved laboratory device used to mechanically separate dockage and/or foreign material from grain.

(9) *Maintenance tolerance.* An allowance established for use in determining whether inspection equipment should be approved for use in performing official inspection services.

(10) *Mean deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the average for the test results from the equipment that is being tested and (ii) the reference standard or the average of the test results from the standard (or National standard) equipment, as applicable.

(11) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(12) *Moisture meter.* An approved laboratory device used to indicate directly or through conversion and/or correction tables the moisture content of grain including cereal grains and oil seeds.

(13) *National standard inspection equipment.* A designated approved unit of inspection equipment used as the reference in determining the accuracy of standard inspection equipment.

(14) *Official inspection equipment.* Equipment approved by the Service and used in performing official inspection services.

(15) *Sample exchange method.* An equipment testing procedure wherein transfer standards are tested to compare the performance of two or more units of the same inspection equipment installed at different locations. One unit of the equipment used in the test shall be standard inspection equipment. (See also direct comparison method.)

(16) *Sieves.* Approved laboratory devices with perforations for use in separating particles of various sizes.

(17) *Standard inspection equipment.* An approved unit of inspection equipment that is designated by the Service for use in determining the accuracy of official inspection equipment.

(18) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(19) *Test weight apparatus.* An approved laboratory device used to measure the test weight (density) of a sample of grain.

(20) *Transfer standard.* The medium (device or material) by which traceability is transferred from one inspection equipment standard unit to another unit.

(21) *Winchester bushel.* A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

## § 801.3 Tolerances for barley pearlers.

The maintenance tolerances for barley pearlers used in performing official inspection services shall be:

| Item | Tolerance |
|---|---|
| Timer switch: | |
| 0 to 60 seconds | ±5 seconds, deviation from standard clock |
| 61 to 90 seconds | ±7 seconds, deviation from standard clock |
| Over 90 seconds | ±10 seconds, deviation from standard clock |
| Pearled portion | ±1.0 gram, mean deviation from standard barley pearler using barley |

## § 801.4 Tolerances for dockage testers.

The maintenance tolerances for dockage testers used in performing official inspection services shall be:

| Item | Tolerance |
|---|---|
| Air separation | ±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat |
| Riddle separation | ±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat |
| Sieve separation | ±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat |
| Total dockage separation. | ±0.15 percent, mean deviation from standard dockage tester using Hard Red Winter wheat |

## § 801.5 Tolerance for diverter-type mechanical samplers.

The maintenance tolerance for diverter-type mechanical samplers (primary, or primary and secondary in combination) used in performing official inspection services shall be ±10 percent, mean deviation from standard sampling device using corn or the same type of grain that the system will be used to sample.

**§ 801.6 Tolerances for moisture meters.**

(a) The maintenance tolerances for Motomco 919 moisture meters used in performing official inspection services shall be:

(1) Headquarters standard meters:

| Moisture range | Tolerance | |
|---|---|---|
| | Direct comparison | Sample exchange |
| Low | ±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat | |
| Mid | ±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat | |
| High | ±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat | |

(2) All other than Headquarters standard meters:

| Moisture range | Tolerance | |
|---|---|---|
| | Direct comparison | Sample exchange |
| Low | ±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat | ±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat |
| Mid | ±0.10 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat | ±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat |
| High | ±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat | ±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat |

(b) The maintenance tolerances for GAC 2100 moisture meters used in performing official inspection services shall be:

(1) Headquarters standard meters. By direct comparison using mid-range Hard Red Winter wheat, ±0.05% mean deviation for the average of the Headquarters standard moisture meters.

(2) All other than Headquarters standard meters. By sample exchange using mid-range Hard Red Winter wheat, ±0.15% mean deviation from the standard meter.

[63 FR 34554, June 25, 1998]

**§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.**

(a) *Reference methods.* (1) The chemical reference protein determinations used to reference and calibrate official NIRS instruments shall be performed in accordance with ''Comparison of Kjeldahl Method for Determination of Crude Protein in Cereal Grains and Oilseeds with Generic Combustion Method: Collaborative Study,'' July/August 1993, Ronald Bicsak, Journal of AOAC International Vol. 76, No. 4, 1993, and subsequently approved by the AOAC International as the Combustion method, AOAC International Method 992.23. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) The chemical reference starch determination used to reference and calibrate official NIRS instruments shall be performed in accordance with the

Corn Refiners Association Method A–20, Analysis for Starch in Corn, Second revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Tolerances*—(1) *NIRS wheat protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of wheat protein content shall be ±0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(2) *NIRS soybean oil and protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of soybean oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(3) *NIRS corn oil, protein, and starch analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of corn oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for determination of protein content shall be ±0.30 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for determination of starch content shall be ±0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

(4) NIRS barley protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of barley protein content are 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

[63 FR 35505, June 30, 1998, as amended at 69 FR 18803, Apr. 9, 2004; 71 FR 65373, Nov. 8, 2006]

## § 801.8 Tolerances for sieves.

The maintenance tolerances for sieves used in performing official inspection services shall be:

(a) Thickness of metal: ±0.0015 inch.

(b) Accuracy of perforation: ±0.001 inch from design specification.

(c) Sieving accuracy:

| Sieve description | Tolerance | |
|---|---|---|
| | Direct comparison | Sample exchange |
| .064×3/8 inch oblong | ±0.2 percent, mean deviation from standard sieve using wheat. | ±0.3 percent, mean deviation from standard sieve using wheat |
| 5/64×3/4 inch slotted | ±0.3 percent, mean deviation from standard sieve using barley. | ±0.5 percent, mean deviation from standard sieve using barley |
| 5 5/64×3/4 inch slotted | ±0.5 percent, mean deviation from standard sieve using barley. | ±0.7 percent, mean deviation from standard sieve using barley |
| 6/64×3/4 inch slotted | ±0.7 percent, mean deviation from standard sieve using barley. | ±1.0 percent, mean deviation from standard sieve using barley |

### § 801.9 Tolerances for test weight apparatuses.

The maintenance tolerances for test weight per bushel apparatuses used in performing official inspection services shall be:

| Item | Tolerance |
|---|---|
| Beam/scale accuracy .... | ±0.10 pound per bushel deviation at any reading, using test weights |
| Overall accuracy ..... | ±0.15 pound per bushel, mean deviation from standard test weight apparatus using wheat |

### § 801.10 [Reserved]

### § 801.11 Related design requirements.

(a) *Suitability*. The design, construction, and location of official sampling and inspection equipment and related sample handling systems shall be suitable for the official sampling and inspection activities for which the equipment is to be used.

(b) *Durability*. The design, construction, and material used in official sampling and inspection equipment and related sample handling systems shall assure that, under normal operating conditions, operating parts will remain fully operable, adjustments will remain reasonably constant, and accuracy will be maintained between equipment test periods.

(c) *Marking and identification*. Official sampling and inspection equipment for which tolerances have been established shall be permanently marked to show the manufacturer's name, initials, or trademark; the serial number of the equipment; and the model, the type, and the design or pattern of the equipment. Operational controls for mechanical samplers and related sample handling systems, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbutton or switch.

(d) *Repeatability*. Official inspection equipment when tested in accordance with §§ 800.217 and 800.219 shall, within the tolerances prescribed in §§ 801.3 through 801.10, be capable of repeating its results when the equipment is operated in its normal manner.

(e) *Security*. Mechanical samplers and related sample handling systems shall provide a ready means of sealing to deter unauthorized adjustments, removal, or changing of component parts or timing sequence without removing or breaking the seals; and otherwise be designed, constructed, and installed in a manner to prevent deception by any person.

(f) *Installation requirements*. Official sampling and inspection equipment and related sample handling systems shall be installed (1) at a site approved by the Service, (2) according to the manufacturer's instructions, and (3) in such a manner that neither the operation nor the performance of the equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

### § 801.12 Design requirements incorporated by reference.

(a) *Moisture meters*. All moisture meters approved for use in official grain moisture determination and certification shall meet applicable requirements contained in the FGIS Moisture Handbook and the General Code and Grain Moisture Meters Code of the 1991 edition of the National Institute of Standards and Technology's (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.'' Pursuant to the provisions of 5 U.S.C. 552(a), the materials in Handbook 44 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

The NIST Handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

The following Handbook 44 requirements are not incorporated by reference:

*General Code (1.10.)*

G-S.5.5. Money Values, Mathematical Agreement

G-T.1. Acceptance Tolerances

G-UR.3.3. Position of Equipment
G-UR.3.4. Responsibility, Money-Operated Devices

*Grain Moisture Meters (5.56.)*

N.1.1. Transfer Standards
N.1.2. Minimum Test
N.1.3. Temperature Measuring Equipment
T.2. Tolerance Values
T.3. For Test Weight Per Bushel Indications or Recorded Representations
UR.3.2. Other Devices not used for Commercial Measurement
UR.3.7. Location
UR.3.11. Posting of Meter Operating Range

(b) [Reserved]

[57 FR 2673, Jan. 23, 1992, as amended at 69 FR 18803, Apr. 9, 2004]

# PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Sec.
802.0 Applicability.
802.1 Qualified laboratories.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

## § 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 2002 edition of National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices'' (Handbook 44); and NIST Handbook 105–1 (1990 Edition), ''Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures,'' (Handbook 105–1). These requirements are confirmed to be met by having National Type Evaluation Program or Federal Grain Inspection Service type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 2002 edition of the NIST Handbook 44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b) of this section, the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They can be downloaded without charge at *http://ts.nist.gov/ts/htdocs/230/235owmhome.htm*. They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The following Handbook 44 requirements are not incorporated by reference:

*Scales (2.20)*

S.1.8. Computing Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2. Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action For Inaccuracy
N.4. Coupled-in-Motion Railroad Weighing Systems
N.6. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales

T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product-Test Scales (all sections)
T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage

*Automatic Bulk Weighing Systems (2.22)*

N.1.3. Decreasing-Load Test

[68 FR 34522, June 10, 2003, as amended at 69 FR 18803, Apr. 9, 2004]

### § 802.1 Qualified laboratories.

(a) *Metrology laboratories.* (1) Any State metrology laboratory currently approved by the NBS ongoing certification program having auditing capability is automatically approved by the Service.

(2) Any county or city weights and measures jurisdiction approved by NBS or by their respective NBS-Certified State laboratory as being equipped with appropriate traceable standards and trained staff to provide valid calibration is approved by the Service. The State approval may be documented by a certificate or letter. The jurisdiction must be equipped to provide suitable certification documentation.

(3) Any commercial industrial laboratory primarily involved in the business of sealing and calibrating test weights (standards) will be approved by the Service provided:

(i) It requests written authority to perform tolerance testing of weights used within the Service's program(s) through their approved State jurisdiction. Copies of its request and written reference regarding the State decision shall be provided to the Service. A positive decision by the State will be required as a prerequisite to the Service's granting approval to any commercial laboratory to tolerance test the weights used in testing scales under the jurisdiction of the Service;

(ii) It has NBS traceable standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) It is equipped to provide suitable certification documentation;

(iv) It permits the Service to make onsite visits to laboratory testing space.

(4) Approval of the commercial industrial laboratory will be at the Service's discretion. Once it has obtained approval, the commercial industrial laboratory maintains its site in a manner prescribed by the State and the Service.

(b) *Type evaluation laboratories.* Any State measurement laboratory currently certified by NBS in accordance with its program for the Certification of Capability of State Measurement Laboratories to conduct evaluations under the National Type Evaluation Program is approved by the Service.

(Approved by the Office of Management and Budget under control number 0580–0011)

[51 FR 7052, Feb. 28, 1986, as amended at 54 FR 5925, Feb. 7, 1989]

# PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

## Subpart A—General Provisions

TERMS DEFINED

Sec.
810.101 Grains for which standards are established.
810.102 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.103 Basis of determination.
810.104 Percentages.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

810.105 Grades and grade requirements.
810.106 Grade designations.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

810.107 Special grades and special grade requirements.
810.108 Special grade designations.

## Subpart B—United States Standards for Barley

TERMS DEFINED

810.201 Definition of barley.
810.202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.204 Grades and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley.
810.205 Grades and grade requirements for Two-rowed Malting barley.
810.206 Grades and grade requirements for barley.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.207 Special grades and special grade requirements.

Subpart C—United States Standards for Canola—Terms Defined

810.301 Definition of canola.
810.302 Definitions of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.303 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.304 Grades and grade requirements for canola.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.305 Special grades and special grade requirements.

NONGRADE REQUIREMENTS

810.306 Nongrade requirements.

Subpart D—United States Standards for Corn

TERMS DEFINED

810.401 Definition of corn.
810.402 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.403 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.404 Grades and grade requirements for corn.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.405 Special grades and special grade requirements.

Subpart E—United States Standards for Flaxseed

TERMS DEFINED

810.601 Definition of flaxseed.
810.602 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.603 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.604 Grades and grade requirements for flaxseed.

Subpart F—United States Standards for Mixed Grain

TERMS DEFINED

810.801 Definition of mixed grain.
810.802 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.803 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.804 Grades and grade requirements for mixed grain.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.805 Special grades and special grade requirements.

Subpart G—United States Standards for Oats

TERMS DEFINED

810.1001 Definition of oats.
810.1002 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1003 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1004 Grades and grade requirements for oats.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.1005 Special grades and special grade requirements.

Subpart H—United States Standards for Rye

TERMS DEFINED

810.1201 Definition of rye.
810.1202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1204 Grades and grade requirements for rye.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.1205 Special grades and special grade requirements.

Subpart I—United States Standards for Sorghum

TERMS DEFINED

810.1401 Definition of sorghum.
810.1402 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1403 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1404 Grades and grade requirements for sorghum.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.1405 Special grades and special grade requirements.

Subpart J—United States Standards for Soybeans

TERMS DEFINED

810.1601 Definition of soybeans.
810.1602 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1603 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1604 Grades and grade requirements for soybeans.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.1605 Special grades and special grade requirements.

Subpart K—United States Standards for Sunflower Seed

TERMS DEFINED

810.1801 Definition of sunflower seed.
810.1802 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.1803 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.1804 Grades and grade requirements for sunflower seed.

Subpart L—United States Standards for Triticale

TERMS DEFINED

810.2001 Definition of triticale.
810.2002 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.2003 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.2004 Grades and grade requirements for triticale.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.2005 Special grades and special grade requirements.

Subpart M—United States Standards for Wheat

TERMS DEFINED

810.2201 Definition of wheat.
810.2202 Definition of other terms.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

810.2203 Basis of determination.

GRADES AND GRADE REQUIREMENTS

810.2204 Grades and grade requirements for wheat.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

810.2205 Special grades and special grade requirements.

AUTHORITY: 7 U.S.C. 71–87k.

EFFECTIVE DATE NOTE: At 72 FR 39732, July 20, 2007, the authority citation to part 810 was revised, effective June 1, 2008. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 7 U.S.C. 71–87k.

SOURCE: 52 FR 24418, June 30, 1987, unless otherwise noted.

## Subpart A—General Provisions

NOTE: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

TERMS DEFINED

### § 810.101 Grains for which standards are established.

Grain refers to barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

[57 FR 3274, Jan. 29, 1992]

### § 810.102 Definition of other terms.

Unless otherwise stated, the definitions in this section apply to all grains. All other definitions unique to a particular grain are contained in the appropriate subpart for that grain.

(a) *Distinctly low quality.* Grain that is obviously of inferior quality because it is in an unusual state or condition, and that cannot be graded properly by use of other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, or similar objects.

(b) *Moisture.* Water content in grain as determined by an approved device according to procedures prescribed in FGIS instructions.

(c) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

(e) *Whole kernels.* Grain with ¼ or less of the kernel removed.

[52 FR 24418, June 30, 1987, as amended at 60 FR 61196, Nov. 29, 1995; 71 FR 52406, Sept. 6, 2006]

EFFECTIVE DATE NOTE: At 72 FR 39732, July 20, 2007, § 801.102 was amended by revising paragraph (d), effective June 1, 2008. For the convenience of the user, the revised text is set forth as follows:

### § 810.102 Definition of other terms.

* * * * *

(d) *Test Weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, sorghum, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

* * * * *

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.103 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, cockleburs, crotalaria seeds, dockage, garlic, live insect infestation, large stones, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) is made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole

at the time of sampling according to procedures prescribed in FGIS instructions.

(c) *All other determinations.* The basis of determination for all other factors is contained in the individual standards.

### § 810.104 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. Foreign material in sunflower seed is reported to the nearest one-half percent. Ranges of sunflower seed foreign material are reported as follows: 0.0 to 0.24 is reported as 0.0 percent, 0.25 to 0.74 as 0.5 percent, 0.75 to 1.24 as 1.0 percent, and the like. Foreign material and fines in mixed grain is reported in whole percent. The percentage of smut in barley, sclerotinia and stones in canola, and ergot in all grains is reported to the nearest hundredth percent. The percentage when determining the identity of all grains is reported to the nearest whole percent. Also reported to the nearest whole percent are the classes and subclasses in wheat; flint corn; flint and dent corn; waxy corn; classes in barley; and the percentage of each kind of grain in mixed grain. Plump barley shall be expressed in terms of the range in which it falls. Ranges shall be: Below 50 percent, 50 to 55 percent, 56 to 60 percent, 61 to 65 percent, and the like. All other percentages are reported in tenths percent.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987, as amended at 54 FR 24157, June 6, 1989; 57 FR 3274, Jan. 29, 1992; 59 FR 10573, Mar. 7, 1994; 61 FR 18491, Apr. 26, 1996; 63 FR 20056, Apr. 23, 1998]

## GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

### § 810.105 Grades and grade requirements.

The grades and grade requirements for each grain (except mixed grain) and shown in the grade table(s) of the respective standards. Mixed grain grade requirements are not presented in tabular form.

### § 810.106 Grade designations.

(a) *Grade designations for grain.* The grade designations include in the following order:

(1) The letters ''U.S.'';

(2) The abbreviation ''No.'' and the number of the grade or the words ''Sample grade'';

(3) When applicable, the subclass;

(4) The class or kind of grain;

(5) When applicable, the special grade(s) except in the case of bright, extra heavy, and heavy oats or plump rye, the special grades, ''bright'', ''extra heavy'', ''heavy'' and ''plump'' will precede the word ''oats'' or ''rye'' as applicable; and

(6) When applicable, the word ''dockage'' together with the percentage thereof.

When applicable, the remarks section of the certificate will include in the order of predominance; in the case of a mixed class, the name and approximate percentage of the classes; in the case of sunflower seed, the percentage of admixture; in the case of mixed grain, the grains present in excess of 10.0 percent of the mixture and when applicable, the words *Other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in a quantity less than 10.0 percent; in the case of barley, if requested, the word ''plump'' with the percentage range thereof; in the case of wheat, if requested, the percentage of protein content.

(b) *Optional grade designations.* In addition to paragraph (a) of this Section, grain may be certificated under certain conditions as described in FGIS instructions when supported by official analysis, as ''U.S. No. 2 or better (*type of grain*)'', ''U.S. No. 3 or better (*type of grain*)'', and the like.

[52 FR 24418, June 30, 1987, as amended at 53 FR 15017, Apr. 27, 1988]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

### § 810.107 Special grades and special grade requirements.

A special grade serves to draw attention to a special factor or condition present in the grain and, when applicable, is supplemental to the grade assigned under § 810.106. Except for the special grade ''infested,'' the special grades are identified and requirements are established in each respective grain standards.

(a) *Infested wheat, rye, and triticale.* Tolerances for live insects responsible for infested wheat, rye, and triticale are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample size for bargelots and shiplots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain.

(b) *Infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain.* Tolerances for live insects responsible for infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample for shiplots and bargelots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

[52 FR 24441, June 30, 1987, as amended at 57 FR 3274, Jan. 29, 1992]

### § 810.108 Special grade designations.

Special grade designations are shown as prescribed in § 810.106. Multiple special grade designations will be listed in alphabetical order. In the case of treated wheat, the official certificate shall show whether the wheat has been scoured, limed, washed, sulfured, or otherwise treated.

## Subpart B—United States Standards for Barley

TERMS DEFINED

### § 810.201 Definition of barley.

Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L.) and not more than 25 percent of other grains for which standards have been established under the United States Grain Standards Act. The term ''barley'' as used in these standards does not include hull-less barley or black barley.

### § 810.202 Definition of other terms.

(a) *Black barley*. Barley with black hulls.

(b) *Broken kernels*. Barley with more than ¼ of the kernel removed.

(c) *Classes*. There are two classes of barley: Malting barley and Barley.

(1) *Malting barley*. Barley of a six-rowed or two-rowed malting type. The class Malting barley is divided into the following three subclasses:

(i) *Six-rowed Malting barley*. Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with white aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Six-rowed Blue Malting barley*. Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels. Six-rowed Blue Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(iii) *Two-rowed Malting barley*. Barley that has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(2) *Barley*. Any barley of a six-rowed or two-rowed type. The class Barley is divided into the following three subclasses:

(i) *Six-rowed barley*. Any Six-rowed barley that contains not more than 10.0 percent of two-rowed varieties.

(ii) *Two-rowed barley*. Any Two-rowed barley with white hulls that contains not more than 10.0 percent of six-rowed varieties.

(iii) *Barley*. Any barley that does not meet the requirements for the subclasses Six-rowed barley or Two-rowed barley.

(d) *Damaged kernels*. Kernels, pieces of barley kernels, other grains, and wild oats that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, injured-by-heat, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Dockage*. All matter other than barley that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of barley kernels removed in properly separating the material other than barley and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material*. All matter other than barley, other grains, and wild oats that remains in the sample after removal of dockage.

(g) *Frost-damaged kernels*. Kernels, pieces of barley kernels, other grains, and wild oats that are badly shrunken and distinctly discolored black or brown by frost.

(h) *Germ-damaged kernels*. Kernels, pieces of barley kernels, other grains, and wild oats that have dead or discolored germ ends.

(i) *Heat-damaged kernels*. Kernels, pieces of barley kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(j) *Injured-by-frost kernels.* Kernels and pieces of barley kernels that are distinctly indented, immature or shrunken in appearance or that are light green in color as a result of frost before maturity.

(k) *Injured-by-heat kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are slightly discolored as a result of heat.

(l) *Injured-by-mold kernels.* Kernels, pieces of barley kernels containing slight evidence of mold.

(m) *Mold-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are weathered and contain considerable evidence of mold.

(n) *Other grains.* Black barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(o) *Plump barley.* Barley that remains on top of a 6/64 × 3/4 slotted-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(p) *Sieves.* (1) 5/64 × 3/4 slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0781 (5/64) inch by 0.750 (3/4) inch.

(2) 5–1/2 6/64 × 3/4 slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0895 (5–1/2/64) inch by 0.750 (3/4) inch.

(3) 6/64 × 3/4 slotted-hole sieve. A metal sieve 0.032 inch thick with slotted perforations 0.0937 (6/64) inch by 0.750 (3/4) inch.

(q) *Skinned and broken kernels.* Barley kernels that have one-third or more of the hull removed, or that the hull is loose or missing over the germ, or broken kernels, or whole kernels that have a part or all of the germ missing.

(r) *Sound barley.* Kernels and pieces of barley kernels that are not damaged, as defined under (d) of this section.

(s) *Suitable malting type.* Varieties of malting barley that are recommended by the American Malting Barley Association and other malting type(s) used by the malting and brewing industry. The varieties are listed in GIPSAs instructions.

(t) *Thin barley.* Thin barley shall be defined for the appropriate class as follows:

(1) *Malting barley.* Six-rowed Malting barley that passes through a 5/64 × 3/4 slotted-hole sieve and Two-rowed Malting barley which passes through a 5.5/64×3/4 slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

(2) *Barley.* Six-rowed barley, Two-rowed barley, or Barley that passes through a 5/64×3/4 slotted-hole sieve in accordance with procedures prescribed in GIPSAs instructions.

(u) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis* L.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987; 61 FR 18491, Apr. 26, 1996]

## PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.203 Basis of determination.

*All other determinations.* Each determination of heat-damaged kernels, injured-by-heat kernels, and white or blue aleurone layers in Six-rowed barley is made on pearled, dockage-free barley. Other determinations not specifically provided for under the *General Provisions* are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

## § 810.204 Grades and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley.

| Grade | Minimum limits of— | | | Maximum limits of— | | | | |
|---|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | Suitable malting types (percent) | Sound barley [1] (percent) | Damaged kernels [1] (percent) | Foreign material (percent) | Other grains (percent) | Skinned and broken kernels (percent) | Thin barley (percent) |
| U.S. No. 1 | 47.0 | 95.0 | 97.0 | 2.0 | 0.5 | 2.0 | 4.0 | 7.0 |
| U.S. No. 2 | 45.0 | 95.0 | 94.0 | 3.0 | 1.0 | 3.0 | 6.0 | 10.0 |
| U.S. No. 3 | 43.0 | 95.0 | 90.0 | 4.0 | 2.0 | 5.0 | 8.0 | 15.0 |
| U.S. No. 4 | 43.0 | 95.0 | 87.0 | 5.0 | 3.0 | 5.0 | 10.0 | 15.0 |

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTES: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six-rowed Malting barley and Six-rowed Blue Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

[61 FR 18492, Apr. 26, 1996]

## § 810.205 Grades and grade requirements for Two-rowed Malting barley.

| Grade | Minimum limits of— | | | Maximum limits of— | | | |
|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | Suitable malting types (percent) | Sound barley [1] (percent) | Wild oats (percent) | Foreign material (percent) | Skinned and broken kernels (percent) | Thin barley (percent) |
| U.S. No. 1 | 50.0 | 97.0 | 98.0 | 1.0 | 0.5 | 5.0 | 5.0 |
| U.S. No. 2 | 48.0 | 97.0 | 98.0 | 1.0 | 1.0 | 7.0 | 7.0 |
| U.S. No. 3 | 48.0 | 95.0 | 96.0 | 2.0 | 2.0 | 10.0 | 10.0 |
| U.S. No. 4 | 48.0 | 95.0 | 93.0 | 3.0 | 3.0 | 10.0 | 10.0 |

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTES: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Two-rowed Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

[61 FR 18492, Apr. 26, 1996]

## § 810.206 Grades and grade requirements for barley.

| Grade | Minimum limits of— | | Maximum Limits of— | | | | |
|---|---|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | Sound barley (percent) | Damaged kernels [1] (percent) | Heat damaged kernels (percent) | Foreign material (percent) | Broken kernels (percent) | Thin barley (percent) |
| U.S. No. 1 | 47.0 | 97.0 | 2.0 | 0.2 | 1.0 | 4.0 | 10.0 |
| U.S. No. 2 | 45.0 | 94.0 | 4.0 | 0.3 | 2.0 | 8.0 | 15.0 |
| U.S. No. 3 | 43.0 | 90.0 | 6.0 | 0.5 | 3.0 | 12.0 | 25.0 |
| U.S. No. 4 | 40.0 | 85.0 | 8.0 | 1.0 | 4.0 | 18.0 | 35.0 |
| U.S. No. 5 | 36.0 | 75.0 | 10.0 | 3.0 | 5.0 | 28.0 | 75.0 |

U.S. Sample Grade:

U.S. Sample grade shall be barley that:

(a) Does not meet the requirements for the grades 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more caster beans (*Ricinus communis* L.), 4 or more particles of unknown foreign substance(s) or commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of barley; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

[61 FR 18492, Apr. 26, 1996]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.207 Special grades and special grade requirements.

(a) *Blighted barley*. Barley that contains more than 4.0 percent of fungus-damaged and/or mold-damaged kernels.

(b) *Ergoty barley*. Barley that contains more than 0.10 percent ergot.

(c) *Garlicky barley*. Barley that contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(d) *Smutty barley*. Barley that has kernels covered with smut spores to give a smutty appearance in mass, or which contains more than 0.20 percent smut balls.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart C—United States Standards for Canola—Terms Defined

SOURCE: 57 FR 3274, Jan. 29, 1992, unless otherwise noted.

### § 810.301 Definition of canola.

Seeds of the genus *Brassica* from which the oil shall contain less than 2 percent erucic acid in its fatty acid profile and the solid component shall contain less than 30.0 micromoles of any one or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy-3-butenyl, or 2-hydroxy-4-pentenyl glucosinolate, per gram of air-dried, oil free solid. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

### § 810.302 Definitions of other terms.

(a) *Conspicuous Admixture*. All matter other than canola, including but not limited to ergot, sclerotinia, and stones, which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of machine separated dockage. Conspicuous admixture is added to machine separated dockage in the computation of total dockage.

(b) *Damaged kernels*. Canola and pieces of canola that are heat-damaged, sprout-damaged, mold-damaged, distinctly green damaged, frost damaged, rimed damaged, or otherwise materially damaged.

(c) *Distinctly green kernels*. Canola and pieces of canola which, after being crushed, exhibit a distinctly green color.

(d) *Dockage*. All matter other than canola that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of canola kernels that cannot be recovered by properly rescreening or recleaning. Machine separated dockage is added to conspicuous admixture in the computation of total dockage.

(e) *Ergot*. Sclerotia (sclerotium, sing.) of the fungus, *Claviceps* species, which are associated with some seeds other than canola where the fungal organism has replaced the seed.

(f) *Heat-damaged kernels*. Canola and pieces of canola which, after being crushed, exhibit that they are discolored and damaged by heat.

(g) *Inconspicuous admixture*. Any seed which is difficult to distinguish from canola. This includes, but is not limited to, common wild mustard (*Brassica kaber* and *B. juncea*), domestic brown mustard (*Brassica juncea*), yellow mustard (*B. hirta*), and seed other than the mustard group.

(h) *Sclerotia (Sclerotium, sing.)*. Dark colored or black resting bodies of the fungi *Sclerotinia* and *Claviceps*.

(i) *Sclerotinia*. Genus name which includes the fungus *Sclerotinia sclerotiorum* which produces sclerotia. Canola is only infrequently infected, and the sclerotia, unlike sclerotia of ergot, are usually associated within the stem of the plants.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.303 Basis of determination.

Each determination of conspicuous admixture, ergot, sclerotinia, stones, damaged kernels, heat-damaged kernels, distinctly green kernels, and inconspicuous admixture is made on the basis of the sample when free from

dockage. Other determinations not specifically provided for under the general provisions are made on the basis of the sample as a whole, except the determination of odor is made on either the basis of the sample as a whole or the sample when free from dockage. The content of glucosinolates and erucic acid is determined on the basis of the sample according to procedures prescribed in FGIS instructions.

GRADES AND GRADE REQUIREMENTS

### § 810.304 Grades and grade requirements for canola.

| Grading factors | Grades, U.S. Nos. | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| | Maximum percent limits of: | | |
| Damaged kernels: | | | |
| Heat damaged | 0.1 | 0.5 | 2.0 |
| Distinctly green | 2.0 | 6.0 | 20.0 |
| Total | 3.0 | 10.0 | 20.0 |
| Conspicuous admixture: | | | |
| Ergot | 0.05 | 0.05 | 0.05 |
| Sclerotinia | 0.05 | 0.10 | 0.15 |
| Stones | 0.05 | 0.05 | 0.05 |
| Total | 1.0 | 1.5 | 2.0 |
| Inconspicuous admixture | 5.0 | 5.0 | 5.0 |
| | Maximum count limits of: | | |
| Other material: | | | |
| Animal filth | 3 | 3 | 3 |
| Glass | 0 | 0 | 0 |
| Unknown foreign substance | 1 | 1 | 1 |
| U.S. Sample grade Canola that: (a) Does not meet the requirements for U.S. Nos. 1, 2, 3; or (b) Has a musty, sour, or commercially objectionable foreign odor; or (c) Is heating or otherwise of distinctly low quality. | | | |

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.305 Special grades and special grade requirements.

*Garlicky canola.* Canola that contains more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in approximately a 500 gram portion.

NONGRADE REQUIREMENTS

### § 810.306 Nongrade requirements.

*Glucosinolates.* Content of glucosinolates in canola is determined according to procedures prescribed in FGIS instructions.

## Subpart D—United States Standards for Corn

TERMS DEFINED

### § 810.401 Definition of corn.

Grain that consists of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (*Zea mays* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

### § 810.402 Definition of other terms.

(a) *Broken corn.* All matter that passes readily through a 12/64 round-hole sieve and over a 6/64 round-hole sieve sample according to procedures prescribed in FGIS instructions.

(b) *Broken corn and foreign material.* All matter that passes readily through a 12/64 round-hole sieve and all matter other than corn that remains in the sieved after sieving according to procedures prescribed in FGIS instructions.

(c) *Classes.* There are three classes for corn: Yellow corn, White corn, and Mixed corn.

(1) *Yellow corn.* Corn that is yellow-kerneled and contains not more than 5.0 percent of corn of other colors. Yellow kernels of corn with a slight tinge of red are considered yellow corn.

(2) *White corn.* Corn that is white-kerneled and contains not more than 2.0 percent of corn of other colors. White kernels of corn with a slight tinge of light straw or pink color are considered white corn.

(3) *Mixed corn.* Corn that does not meet the color requirements for either of the classes Yellow corn or White corn and includes white-capped Yellow corn.

(d) *Damaged kernels.* Kernels and pieces of corn kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Foreign material.* All matter that passes readily through a 6/64 round-hole sieve and all matter other than corn that remains on top of the 12/64

round-hole sieve according to procedures prescribed in FGIS instructions.

(f) *Heat-damaged kernels.* Kernels and pieces of corn kernels that are materially discolored and damaged by heat.

(g) *Sieves*—(1) *12/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 (12/64) inch in diameter which are 1/4 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(2) *6/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.0937 (6/64) inch in diameter which are 5/32 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24437, June 30, 1987; 52 FR 28534, July 31, 1987]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

## § 810.403 Basis of determination.

Each determination of class, damaged kernels, heat-damaged kernels, waxy corn, flint corn, and flint and dent corn is made on the basis of the grain after the removal of the broken corn and foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from broken corn and foreign material.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

GRADES AND GRADE REQUIREMENTS

## § 810.404 Grades and grade requirements for corn.

| Grade | Minimum test weight per bushel (pounds) | Maximum limits of | | |
|---|---|---|---|---|
| | | Damaged kernels | | Broken corn and foreign material (percent) |
| | | Heat damaged kernels (percent) | Total (percent) | |
| U.S. No. 1 | 56.0 | 0.1 | 3.0 | 2.0 |
| U.S. No. 2 | 54.0 | 0.2 | 5.0 | 3.0 |
| U.S. No. 3 | 52.0 | 0.5 | 7.0 | 4.0 |
| U.S. No. 4 | 49.0 | 1.0 | 10.0 | 5.0 |
| U.S. No. 5 | 46.0 | 3.0 | 15.0 | 7.0 |

U.S. Sample Grade

U.S. Sample grade is corn that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains stones with an aggregate weight in excess of 0.1 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis L.), 4 or more particles of an unknown foreign substance(s)or a commonly recognized harmful or toxic substance(s), 8 or more cockleburs (Xanthium spp.), or similar seeds singly or in combination, or animal filth in excess of 0.20 percent in 1,000 grams; or

(c) Has a musty, sour, or commercially objectionable foreign odor; or

(d) Is heating or otherwise of distinctly low quality.

[60 FR 61196, Nov. 29, 1995]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

## § 810.405 Special grades and special grade requirements.

(a) *Flint corn.* Corn that consists of 95 percent or more of flint corn.

(b) *Flint and dent corn.* Corn that consists of a mixture of flint and dent corn containing more than 5.0 percent but less than 95 percent of flint corn.

(c) *Waxy corn.* Corn that consists of 95 percent or more waxy corn, according to procedures prescribed in FGIS instructions.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987; 52 FR 28534, July 31, 1987]

## Subpart E—United States Standards for Flaxseed

TERMS DEFINED

### § 810.601 Definition of flaxseed.

Grain that, before the removal of dockage, consists of 50 percent or more of common flaxseed (*Linum usitatissimum* L.) and not more than 20 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of dockage, contains 50 percent or more of whole flaxseed.

### § 810.602 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of flaxseed kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than flaxseed that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of flaxseed kernels removed in properly separating the material other than flaxseed and that cannot be recovered by properly rescreening or recleaning.

(c) *Heat-damaged kernels.* Kernels and pieces of flaxseed kernels that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.603 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

### § 810.604 Grades and grade requirements for flaxseed.

| Grade | Minimum test weight per bushel (pounds) | Maximum limits of damaged kernels— | |
|---|---|---|---|
| | | Heat damaged kernels (percent) | Total (percent) |
| U.S. No. 1 | 49.0 | 0.2 | 10.0 |
| U.S. No. 2 | 47.0 | 0.5 | 15.0 |

U.S. Sample grade—

U.S. Sample grade is flaxseed that:

(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird dropping, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of flaxseed; or

(c) Has musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or

(d) Is heating or otherwise of distinctly low quality.

## Subpart F—United States Standards for Mixed Grain

TERMS DEFINED

### § 810.801 Definition of mixed grain.

Any mixture of grains for which standards have been established under the United States Grain Standards Act, provided that such mixture does not come within the requirements of any of the standards for such grains; and that such mixture consists of 50 percent or more of whole kernels of grain and/or whole or broken soybeans which will not pass through a 5/64 triangular-hole sieve and/or whole flaxseed that passes through such a sieve after sieving according to procedures prescribed in FGIS instructions.

### § 810.802 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged,

sprout-damaged, or otherwise materially damaged.

(b) *Foreign material and fines.* All matter other than whole flaxseed that passes through a 5/64 triangular-hole sieve, and all matter other than grains for which standards have been established under the Act, that remains in the sieved sample.

(c) *Grades.* U.S. Mixed Grain, or U.S. Sample grade Mixed Grain, and special grades.

(d) *Heat-damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are materially discolored and damaged by heat.

(e) *Sieve—5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.803 Basis of determination.

Each determination of damaged and heat-damaged kernels, and the percentage of each kind of grain in the mixture is made on the basis of the sample after removal of foreign material and fines. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material and fines.

GRADES AND GRADE REQUIREMENTS

### § 810.804 Grades and grade requirements for mixed grain.

(a) *U.S. Mixed Grain (grade).* Mixed grain with not more than 15.0 percent of damaged kernels, and not more than 3.0 percent of heat-damaged kernels, and that otherwise does not meet the requirements for the grade U.S. Sample grade Mixed Grain.

(b) *U.S. Sample grade Mixed Grain.* Mixed grain that:

(1) Does not meet the requirements for the grade U.S. Mixed Grain; or

(2) Contains more than 16.0 percent moisture; or

(3) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more Crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 more cockleburs (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more pieces of an unknown foreign substance(s) or a recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of mixed grain; or

(4) Is musty, sour, or heating; or

(5) Has any commercially objectionable foreign odor except smut or garlic; or

(6) Is otherwise of distinctly low quality.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.805 Special grades and special grade requirements.

(a) *Blighted mixed grain.* Mixed grain in which barley predominates and that contains more than 4.0 percent of fungus-damaged and/or mold-damaged barley kernels.

(b) *Ergoty mixed grain.* (1) Mixed grain in which rye or wheat predominates and that contains more than 0.30 percent ergot, or

(2) Any other mixed grain that contains more than 0.10 percent ergot.

(c) *Garlicky mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and that contains 2 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 1,000 grams of mixed grain; or

(2) Any other mixed grain that contains 4 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of mixed grain.

(d) *Smutty mixed grain.* (1) Mixed grain in which rye, triticale, or wheat predominates, and that contains 15 or more average size smut balls, or an equivalent quantity of smut spores in 250 grams of mixed grain, or

(2) Any other mixed grain that has the kernels covered with smut spores to give a smutty appearance in mass, or that contains more than 0.2 percent smut balls.

(e) *Treated mixed grain.* Mixed grain that has been scoured, limed, washed,

sulfured, or treated in such a manner that its true quality is not reflected by the grade designation U.S. Mixed Grain or U.S. Sample grade Mixed Grain.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart G—United States Standards for Oats

TERMS DEFINED

### § 810.1001 Definition of oats.

Grain that consists of 50 percent or more of oats (*Avena sativa* L. and *A. byzantina C.* Koch) and may contain, singly or in combination, not more than 25 percent of wild oats and other grains for which standards have been established under the United States Grain Standards Act.

### § 810.1002 Definition of other terms.

(a) *Fine seeds.* All matter that passes through a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(b) *Foreign material.* All matter other than oats, wild oats, and other grains.

(c) *Heat-damaged kernels.* Kernels and pieces of oat kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(e) *Sieves*—(1) *5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

(2) *0.064 × 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

(f) *Sound oats.* Kernels and pieces of oat kernels (except wild oats) that are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(g) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterillis* L.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.1003 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

GRADES AND GRADE REQUIREMENTS

### § 810.1004 Grades and grade requirements for oats.

| Grade | Minimum limits— | | Maximum limits— | | |
|---|---|---|---|---|---|
| | Test weight per bushel (pounds) | Sound oats (percent) | Heat-damaged kernels (percent) | Foreign material (percent) | Wild oats (percent) |
| U.S. No. 1 | 36.0 | 97.0 | 0.1 | 2.0 | 2.0 |
| U.S. No. 2 | 33.0 | 94.0 | 0.3 | 3.0 | 3.0 |
| U.S. No. 3[1] | 30.0 | 90.0 | 1.0 | 4.0 | 5.0 |
| U.S. No. 4[2] | 27.0 | 80.0 | 3.0 | 5.0 | 10.0 |

U.S. Sample grade—

U.S. Sample grade are oats which:

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of oats; or

(c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.1005 Special grades and special grade requirements.

(a) *Bleached oats.* Oats that in whole or in part, have been treated with sulfurous acid or any other bleaching agent.

(b) *Bright oats.* Oats, except bleached oats, that are of good natural color.

(c) *Ergoty oats.* Oats that contain more than 0.10 percent ergot.

(d) *Extra-heavy oats.* Oats that have a test weight per bushel of 40 pounds or more.

(e) *Garlicky oats.* Oats that contain 4 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in 500 grams of oats.

(f) *Heavy oats.* Oats that have a test weight per bushel of 38 pounds or more but less than 40 pounds.

(g) *Smutty oats.* Oats that have kernels covered with smut spores to give a smutty appearance in mass, or that contain more than 0.2 percent of smut balls.

(h) *Thin oats.* Oats that contain more than 20.0 percent of oats and other matter, except fine seeds, that pass through a 0.064×3/8 oblong-hole sieve but remain on top of a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart H—United States Standards for Rye

TERMS DEFINED

### § 810.1201 Definition of rye.

Grain that, before the removal of dockage, consists of 50 percent or more of common rye (*Secale cereale* L.) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole rye.

### § 810.1202 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than rye that can be removed from the original sample by use of an approved device in accordance with procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of rye kernels removed in properly separating the material other than rye and that cannot be recovered by properly rescreening and recleaning.

(c) *Foreign material.* All matter other than rye that remains in the sample after the removal of dockage.

(d) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat.

(e) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(f) *Sieve—0.064 × 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 by 0.375 (3/8) inch.

(g) *Thin rye.* Rye and other matter that passes through a 0.064 × 3/8 oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.1203 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

### § 810.1204 Grades and grade requirements for rye.

| Grade | Minimum test weight per bushel (pounds) | Maximum limits of— | | | | |
|---|---|---|---|---|---|---|
| | | Foreign material | | Damaged kernels | | Thin Rye (percent) |
| | | Foreign matter other than wheat (percent) | Total (percent) | Heat damaged (percent) | Total (percent) | |
| U.S. No. 1 | 56.0 | 1.0 | 3.0 | 0.2 | 2.0 | 10.0 |
| U.S. No. 2 | 54.0 | 2.0 | 6.0 | 0.2 | 4.0 | 15.0 |
| U.S. No. 3 | 52.0 | 4.0 | 10.0 | 0.5 | 7.0 | 25.0 |
| U.S. No. 4 | 49.0 | 6.0 | 10.0 | 3.0 | 15.0 | ..... |

U.S. Sample grade—

U.S. Sample grade is rye that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones or any numbers of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of rye; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.1205 Special grades and special grade requirements.

(a) *Ergoty rye.* Rye that contains more than 0.30 percent of ergot.

(b) *Garlicky rye.* Rye that contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light garlicky rye.* Rye that contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Light smutty rye.* Rye that has an unmistakable odor of smut, or that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Plump rye.* Rye that contains not more than 5.0 percent of rye and other matter that passes through a 0.064×⅜ oblong-hole sieve.

(f) *Smutty rye.* Rye that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart I—United States Standards for Sorghum

TERMS DEFINED

### § 810.1401 Definition of sorghum.

Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

### § 810.1402 Definition of other terms.

(a) *Broken kernels.* All matter which passes through a 5/64 triangular-hole sieve and over a 2–1/2/64 round-hole sieve according to procedures prescribed in FGIS instructions.

(b) *Broken kernels and foreign material.* The combination of broken kernels and foreign material as defined in paragraph (a) and (f) of this section.

(c) *Classes.* There are four classes of sorghum: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum.

(1) *Sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, pink, orange, red, or bronze.

(2) *Tannin sorghum.* Sorghum which is high in tannin content due to the presence of a pigmented testa (subcoat) and contains not more than 10.0 percent non-Tannin sorghum. The pericarp color of this class is usually brown but may also be white, yellow, pink, orange, red, or bronze.

(3) *White sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains not more than 2.0 percent sorghum of other classes. The pericarp color of this class is white or translucent and includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

(4) *Mixed sorghum.* Sorghum which does not meet the requirements for any of the classes Sorghum, Tannin sorghum, or White sorghum.

(d) *Damaged kernels.* Kernels, pieces of sorghum kernels and other grains that are badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Dockage.* All matter other than sorghum that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of sorghum kernels removed in properly separating the material other than sorghum.

(f) *Foreign material.* All matter, except sorghum, which passes over the number 6 riddle and all matter other than sorghum that remains on top of the 5/64 triangular-hole sieve according to procedures prescribed in FGIS instructions.

(g) *Heat-damaged kernels.* Kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged by heat.

(h) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, *Sorghum almum* Parodi, sorghum-sudangrass hybrids, sorgrass, sudangrass, and sweet sorghum (*sorgo*).

(i) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(j) *Sieves*—(1) *1.98 mm (5/64 (0.0781) inches) triangular-hole sieve.* A metal sieve 0.81 mm (0.032 inches) thick with equilateral triangular perforations the inscribed circles of which are 1.98 mm (0.0781 inches) in diameter.

(2) *0.99 mm (2 1/2 /64 (0.0391) inches) round-hole sieve.* A metal sieve 0.81 mm (0.032 inch) thick with round holes 0.99 mm (0.0391 inches) in diameter.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24437, June 30, 1987; 52 FR 28534, July 31, 1987; 57 FR 58971, Dec. 14, 1992]

EFFECTIVE DATE NOTE: At 72 FR 39732, July 20, 2007, § 810.1402 was amended by revising paragraphs (c)(1), (2), (3) and (h), effective June 1, 2008. For the convenience of the user, the added and revised text is set forth as follows:

**§ 810.1402 Definition of other terms.**

* * * * *

(c) * * *

(1) *Sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, red, pink, orange or bronze.

(2) *Tannin sorghum.* Sorghum which has a pigmented testa (subcoat) and contains not more than 10 percent of kernels without a pigmented testa.

(3) *White sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains not less than 98.0 percent kernels with a white pericarp, and contains not more than 2.0 percent of sorghum of other classes. This class includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

* * * * *

(h) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, *Sorghum almum* Parodi, and sudangrass; and seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum.

* * * * *

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

**§ 810.1403 Basis of determination.**

Each determination of broken kernels and foreign material is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and

that portion of the broken kernels, and foreign material that will pass through a 1.98 mm (5/64 inches) triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage, broken kernels, and foreign material removed by the 1.98 mm (5/64 inches) triangular-hole sieve.

[57 FR 58971, Dec. 14, 1992]

GRADES AND GRADE REQUIREMENTS

## §810.1404 Grades and grade requirements for sorghum.

| Grading factors | Grades U.S. Nos.[1] | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| Minimum pound limits of: | | | | |
| Test weight per bushel | 57.0 | 55.0 | 53.0 | 51.0 |
| Maximum percent limits of: | | | | |
| Damaged kernels: | | | | |
| Heat (part of total) | 0.2 | 0.5 | 1.0 | 3.0 |
| Total | 2.0 | 5.0 | 10.0 | 15.0 |
| Broken kernels and foreign material: | | | | |
| Foreign material (part of total) | 1.5 | 2.5 | 3.5 | 4.5 |
| Total | 4.0 | 7.0 | 10.0 | 13.0 |
| Maximum count limits of: | | | | |
| Other material: | | | | |
| Animal filth | 9 | 9 | 9 | 9 |
| Castor beans | 1 | 1 | 1 | 1 |
| Crotalaria seeds | 2 | 2 | 2 | 2 |
| Glass | 1 | 1 | 1 | 1 |
| Stones[2] | 7 | 7 | 7 | 7 |
| Unknown foreign substance | 3 | 3 | 3 | 3 |
| Cockleburs | 7 | 7 | 7 | 7 |

U.S. Sample grade is Sorghum that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Has a musty, sour or commercially objectionable foreign odor (except smut odor); or
(c) Is badly weathered, heating or distinctly low quality.

[1] Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.
[2] Aggregate weight of stones must also exceed 0.2 percent of sample weight.

[57 FR 58971, Dec. 14, 1992]

EFFECTIVE DATE NOTE: At 72 FR 39733, July 20, 2007, §810.1404 was revised, effective June 1, 2008. For the convenience of the user, the revised text is set forth as follows:

## §810.1404 Grades and grade requirements for sorghum.

| Grading factors | Grades U.S. Nos.[1] | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Minimum pound limits of** | | | | |
| Test weight per bushel | 57.0 | 55.0 | 53.0 | 51.0 |
| **Maximum percent limits of** | | | | |
| Damaged kernels: | | | | |
| Heat (part of total) | 0.2 | 0.5 | 1.0 | 3.0 |
| Total | 2.0 | 5.0 | 10.0 | 15.0 |
| Broken kernels and foreign material: | | | | |

| Grading factors | Grades U.S. Nos.[1] | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| Foreign material (part of total) | 1.0 | 2.0 | 3.0 | 4.0 |
| Total | 3.0 | 6.0 | 8.0 | 10.0 |
| **Maximum count limits of** | | | | |
| Other material: | | | | |
| Animal filth | 9 | 9 | 9 | 9 |
| Castor beans | 1 | 1 | 1 | 1 |
| Crotalaria seeds | 2 | 2 | 2 | 2 |
| Glass | 1 | 1 | 1 | 1 |
| Stones[2] | 7 | 7 | 7 | 7 |
| Unknown foreign substance | 3 | 3 | 3 | 3 |
| Cockleburs | 7 | 7 | 7 | 7 |
| Total[3] | 10 | 10 | 10 | 10 |

U.S. Sample grade is sorghum that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut odor); or
(c) Is badly weathered, heating, or distinctly low quality.

[1] Sorghum which is distinctly discolored shall not grade higher than U.S.No. 3.
[2] Aggregate weight of stones must also exceed 0.2 percent of the sample weight.
[3] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, unknown foreign substance or cockleburs.

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.1405 Special grades and special grade requirements.

*Smutty sorghum.* Sorghum that has kernels covered with smut spores to give a smutty appearance in mass, or that contains 20 or more smut balls in 100 grams of sorghum.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart J—United States Standards for Soybeans

TERMS DEFINED

### § 810.1601 Definition of soybeans.

Grain that consists of 50 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) that will not pass through an 8/64 round-hole sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

### § 810.1602 Definition of other terms.

(a) *Classes.* There are two classes for soybeans: Yellow soybeans and Mixed soybeans.

(1) *Yellow soybeans.* Soybeans that have yellow or green seed coats and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

(2) *Mixed soybeans.* Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Foreign material.* All matter that passes through an 8/64 round-hole sieve and all matter other than soybeans remaining in the sieved sample after sieving according to procedures prescribed in FGIS instructions.

(d) *Heat-damaged kernels.* Soybeans and pieces of soybeans that are materially discolored and damaged by heat.

(e) *Purple mottled or stained.* Soybeans that are discolored by the growth of a fungus; or by dirt; or by a dirt-like substance(s) including nontoxic inoculants; or by other nontoxic substances.

(f) *Sieve—8/64 round-hole sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (8/64) inch in diameter.

(g) *Soybeans of other colors.* Soybeans that have green, black, brown, or bicolored seed coats. Soybeans that have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color covers 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(h) *Splits.* Soybeans with more than ¼ of the bean removed and that are not damaged.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

**§810.1603 Basis of determination.**

Each determination of class, heat-damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

GRADES AND GRADE REQUIREMENTS

**§810.1604 Grades and grade requirements for soybeans.**

| Grading factors | Grades U.S. Nos. | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | Maximum percent limits of: | | | |
| Damaged kernels: | | | | |
| Heat (part of total) | 0.2 | 0.5 | 1.0 | 3.0 |
| Total | 2.0 | 3.0 | 5.0 | 8.0 |
| Foreign material | 1.0 | 2.0 | 3.0 | 5.0 |
| Splits | 10.0 | 20.0 | 30.0 | 40.0 |
| Soybeans of other colors: [1] | 1.0 | 2.0 | 5.0 | 10.0 |
| | Maximum count limits of: | | | |
| Other material: | | | | |
| Animal filth | 9 | 9 | 9 | 9 |
| Caster beans | 1 | 1 | 1 | 1 |
| Crotalaria seeds | 2 | 2 | 2 | 2 |
| Glass | 0 | 0 | 0 | 0 |
| Stones [2] | 3 | 3 | 3 | 3 |
| Unknown foreign substance | 3 | 3 | 3 | 3 |
| Total [3] | 10 | 10 | 10 | 10 |

U.S. Sample grade are Soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(c) Are heating or of distinctly low quality.

[1] Disregard for Mixed soybeans.
[2] In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.
[3] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown substances. The weight of stones is not applicable for total other material.

[71 FR 52406, Sept. 6, 2006]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### §810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* Soybeans that contain 5 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000 gram portion.

(b) *Purple mottled or stained soybeans.* Soybeans with pink or purple seed coats as determined on a portion of approximately 400 grams with the use of an FGIS Interpretive Line Photograph.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987; 59 FR 10573, Mar. 7, 1994]

## Subpart K—United States Standards for Sunflower Seed

TERMS DEFINED

### §810.1801 Definition of sunflower seed.

Grain that, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed (*Helianthus annuus* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

### §810.1802 Definition of other terms.

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term seed in this and other definitions related to sunflower seed refers to both the kernel and hull which is a fruit or achene.

(b) *Damaged sunflower seed.* Seed and pieces of sunflower seed that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat- damaged, mold-damaged, sprout-damaged, or otherwise materially damaged.

(c) *Dehulled seed.* Sunflower seed that has the hull completely removed from the sunflower kernel.

(d) *Foreign material.* All matter other than whole sunflower seeds containing kernels that can be removed from the original sample by use of an approved device and by handpicking a portion of the sample according to procedures prescribed in FGIS instructions.

(e) *Heat-damaged sunflower seed.* Seed and pieces of sunflower seed that are materially discolored and damaged by heat.

(f) *Hull (Husk).* The ovary wall of the sunflower seed.

(g) *Kernel.* The interior contents of the sunflower seed that are surrounded by the hull.

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### §810.1803 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, test weight per bushel, and dehulled seed is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material.

GRADES AND GRADE REQUIREMENTS

### § 810.1804 Grades and grade requirements for sunflower seed.

| Grade | Minimum test weight per bushel (pounds) | Maximum limits of— | | |
|---|---|---|---|---|
| | | Damaged Sunflower Seed | | Dehulled seed (percent) |
| | | Heat Damaged (percent) | Total (Percent) | |
| U.S. No. 1 | 25.0 | 0.5 | 5.0 | 5.0 |
| U.S. No. 2 | 25.0 | 1.0 | 10.0 | 5.0 |
| U.S. Sample grade— | | | | |
| U.S. Sample grade is sunflower seed that: | | | | |
| (a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or | | | | |
| (b) Contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 600 grams of sunflower seed; or | | | | |
| (c) Has a musty, sour, or commercially objectionable foreign odor; or | | | | |
| (d) Is heating or otherwise of distinctly low quality. | | | | |

## Subpart L—United States Standards for Triticale

TERMS DEFINED

### § 810.2001 Definition of triticale.

Grain that, before the removal of dockage, consists of 50 percent or more of triticale (*X Triticosecale* Wittmack) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole triticale.

### § 810.2002 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(c) *Dockage.* All matter other than triticale that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in properly separating the material other than triticale and that cannot be recovered by properly rescreening or recleaning.

(d) *Foreign material.* All matter other than triticale.

(e) *Heat-damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are materially discolored and damaged by heat.

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, wheat, and wild oats.

(g) *Shrunken and broken kernels.* All matter that passes through a 0.064×3/8 oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(h) *Sieve—0.064×3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

### § 810.2003 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, material other than wheat or rye, and foreign material (total) is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other

determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

GRADES AND GRADE REQUIREMENTS

### § 810.2004 Grades and grade requirements for triticale.

| Grade | Minimum test weight per bushel (pounds) | Maximum limits of— | | | | | |
|---|---|---|---|---|---|---|---|
| | | Damaged Kernels | | Foreign material | | Shrunken and broken kernels (percent) | Defects [3] (percent) |
| | | Heat damaged (percent) | Total [1] (percent) | Material other than wheat or rye (percent) | Total [2] (percent) | | |
| U.S. No. 1 | 48.0 | 0.2 | 2.0 | 1.0 | 2.0 | 5.0 | 5.0 |
| U.S. No. 2 | 45.0 | 0.2 | 4.0 | 2.0 | 4.0 | 8.0 | 8.0 |
| U.S. No. 3 | 43.0 | 0.5 | 8.0 | 3.0 | 7.0 | 12.0 | 12.0 |
| U.S. No. 4 | 41.0 | 3.0 | 15.0 | 4.0 | 10.0 | 20.0 | 20.0 |

U.S. Sample grade—

U.S. Sample grade is triticale that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of triticale; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects include damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.2005 Special grades and special grade requirements.

(a) *Ergoty triticale.* Triticale that contains more than 0.10 percent of ergot.

(b) *Garlicky triticale.* Triticale that contains in a 1,000 gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light garlicky triticale.* Triticale that contains in a 1,000 gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Light smutty triticale.* Triticale that has an unmistakable odor of smut, or that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Smutty triticale.* Triticale that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24441, June 30, 1987]

## Subpart M—United States Standards for Wheat

TERMS DEFINED

### § 810.2201 Definition of wheat.

Grain that, before the removal of dockage, consists of 50 percent or more common wheat (*Triticum aestivum* L.), club wheat (*T. compactum* Host.), and durum wheat (*T. durum* Desf.) and not more than 10 percent of other grains for which standards have been established under the United States Grain

Standards Act and that, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

### § 810.2202 Definition of other terms.

(a) *Classes.* There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, Hard White wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses.

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(5) *Hard White wheat.* All hard endosperm white wheat varieties. There are no subclasses in this class.

(6) *Soft White wheat.* All soft endosperm white wheat varieties. This class is divided into the following three subclasses:

(i) *Soft White wheat.* Soft endosperm white wheat varieties which contain not more than 10 percent of white club wheat.

(ii) *White Club wheat.* Soft endosperm white club wheat varieties containing not more than 10 percent of other soft white wheats.

(iii) *Western White wheat.* Soft White wheat containing more than 10 percent of white club wheat and more than 10 percent of other soft white wheats.

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

(8) *Mixed wheat.* Any mixture of wheat that consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat, in the classes Hard White wheat and Soft White wheat.

(c) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(e) *Dockage.* All matter other than wheat that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in

properly separating the material other than wheat and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than wheat that remains in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wild oats.

(i) *Shrunken and broken kernels.* All matter that passes through a 0.064 × 3/8 oblong-hole sieve after sieving according to procedures prescribed in the FGIS instructions.

(j) *Sieve—0.064 × 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

[52 FR 24418, June 30, 1987, as amended at 54 FR 48736, Nov. 27, 1989; 57 FR 58966, Dec. 14, 1992; 71 FR 8235, Feb. 18, 2006]

PRINCIPLES GOVERNING THE APPLICATION OF STANDARDS

## § 810.2203 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, foreign material, wheat of other classes, contrasting classes, and subclasses is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

[52 FR 24418, June 30, 1987; 52 FR 28534, July 31, 1987]

GRADES AND GRADE REQUIREMENTS

## § 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

GRADES AND GRADE REQUIREMENTS

| Grading factors | Grades U.S. Nos. | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| **Minimum pound limits of:** | | | | | |
| Test weight per bushel: | | | | | |
| Hard Red Spring wheat or White Club wheat | 58.0 | 57.0 | 55.0 | 53.0 | 50.0 |
| All other classes and subclasses | 60.0 | 58.0 | 56.0 | 54.0 | 51.0 |
| **Maximum percent limits of:** | | | | | |
| Defects: | | | | | |
| Damaged kernels. | | | | | |
| Heat (part of total) | 0.2 | 0.2 | 0.5 | 1.0 | 3.0 |
| Total | 2.0 | 4.0 | 7.0 | 10.0 | 15.0 |
| Foreign material | 0.4 | 0.7 | 1.3 | 3.0 | 5.0 |
| Shrunken and broken kernels | 3.0 | 5.0 | 8.0 | 12.0 | 20.0 |
| Total [1] | 3.0 | 5.0 | 8.0 | 12.0 | 20.0 |
| Wheat of other classes: [2]. | | | | | |
| Contrasting classes | 1.0 | 2.0 | 3.0 | 10.0 | 10.0 |
| Total [3] | 3.0 | 5.0 | 10.0 | 10.0 | 10.0 |
| Stones | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |

GRADES AND GRADE REQUIREMENTS—Continued

| Grading factors | Grades U.S. Nos. | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| **Maximum count limits of:** | | | | | |
| Other material in one kilogram: | | | | | |
| Animal filth | 1 | 1 | 1 | 1 | 1 |
| Castor beans | 1 | 1 | 1 | 1 | 1 |
| Crotalaria seeds | 2 | 2 | 2 | 2 | 2 |
| Glass | 0 | 0 | 0 | 0 | 0 |
| Stones | 3 | 3 | 3 | 3 | 3 |
| Unknown foreign substances | 3 | 3 | 3 | 3 | 3 |
| Total[4] | 4 | 4 | 4 | 4 | 4 |
| Insect-damaged kernels in 100 grams | 31 | 31 | 31 | 31 | 31 |

U.S. Sample grade is Wheat that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(c) Is heating or of distinctly low quality.

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.

(b) *Grades and grade requirements for Mixed wheat.* Mixed wheat is graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat that predominates in the mixture, except that the factor wheat of other classes is disregarded.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24442, June 30, 1987; 57 FR 58966, Dec. 14, 1992; 71 FR 8235, Feb. 18, 2006]

SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

### § 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.

(b) *Garlicky wheat.* Wheat that contains in a 1,000 gram portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(d) *Smutty wheat.* Wheat that contains, in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(e) *Treated wheat.* Wheat that has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grades or the U.S. Sample grade designation alone.

[52 FR 24418, June 30, 1987, as amended at 52 FR 24442, June 30, 1987; 57 FR 58967, Dec. 14, 1992]

# PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

## Subpart A—Regulations

DEFINITIONS

Sec.
868.1 Meaning of terms.

ADMINISTRATION

868.5 Administrator.
868.6 Nondiscrimination—policy and provisions.
868.7 Procedures for establishing regulations and standards.
868.8 Complaints and reports of alleged violations.
868.9 Provisions for hearings.
868.10 Information about the Service, Act, and regulations.
868.11 Public information.
868.12 Identification.
868.13 Regulations not applicable for certain purposes.

CONDITIONS FOR OBTAINING OR WITHHOLDING SERVICE

868.20 Availability of services.
868.21 Requirements for obtaining service.
868.22 Withdrawal of request for inspection service by applicant.
868.23 Dismissal of request for inspection service.
868.24 Conditional withholding of service.
868.25 Denial or withdrawal of service.
868.26 Expenses of the cooperator or the Service.

INSPECTION METHODS AND PROCEDURES

868.30 Methods and order of performing inspection service.
868.31 Kinds of inspection services.
868.32 Who shall inspect commodities.
868.33 Sample requirements; general.
868.34 Partial inspection.
868.35 Sampling provisions by level of service.
868.36 Loss of identity.

ORIGINAL INSPECTION SERVICE

868.40 Who may request original inspection service.
868.41 Contract service.
868.42 How to request original inspection service.
868.44 New original inspection.

RETEST INSPECTION SERVICE

868.50 Who may request retest inspection service.
868.51 How to request retest inspection service.
868.52 Certificating retest inspection results.

APPEAL INSPECTION SERVICE

868.60 Who may request appeal inspection service.
868.61 How to request appeal inspection service.
868.62 Who shall perform appeal inspection service.
868.63 Certificating appeal inspection results.

OFFICIAL CERTIFICATES

868.70 Official certificates; issuance and distribution.
868.71 Official certificate requirements.
868.72 Certification of results.
868.73 Corrected certificates.
868.74 Divided-lot certificates.
868.75 Duplicate certificates.

LICENSED INSPECTORS, TECHNICIANS, AND SAMPLERS

868.80 Who may be licensed.
868.81 Licensing procedures.
868.82 Voluntary cancellation or suspension of license.
868.83 Automatic suspension of license by change in employment.
868.84 Suspension or revocation of license.

FEES

868.90 Fees for certain Federal inspection services.
868.91 Fees for certain Federal rice inspection services.
868.92 Explanation of service fees and additional fees.

## Subpart B—Marketing Standards

868.101 General information.
868.102 Procedures for establishing and revising grade standards.
868.103 Public notification of grade standards action.

## Subpart C—United States Standards for Rough Rice

TERMS DEFINED

868.201 Definition of rough rice.
868.202 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

868.203 Basis of determination.
868.204 Interpretive line samples.
868.205 Milling requirements.
868.206 Milling yield determination.
868.207 Moisture.
868.208 Percentages.
868.209 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

868.210 Grades and grade requirements for the classes of rough rice. (See also § 868.212.)
868.211 Grade designation.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

868.212 Special grades and requirements.
868.213 Special grade designation.

## Subpart D—United States Standards for Brown Rice for Processing

TERMS DEFINED

868.251 Definition of brown rice for processing.
868.252 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

868.253 Basis of determination.
868.254 Broken kernels determination.
868.255 Interpretive line samples.
868.256 Milling requirements.
868.257 Milling yield determination.
868.258 Moisture.

868.259 Percentages.
868.260 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

868.261 Grades and grade requirements for the classes of brown rice for processing. (See also § 868.263.)
868.262 Grade designation.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

868.263 Special grades and special grade requirements.
868.264 Special grade designation.

## Subpart E—United States Standards for Milled Rice

TERMS DEFINED

868.301 Definition of milled rice.
868.302 Definition of other terms.

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

868.303 Basis of determination.
868.304 Broken kernels determination.
868.305 Interpretive line samples.
868.306 Milling requirements.
868.307 Moisture.
868.308 Percentages.
868.309 Information.

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

868.310 Grades and grade requirements for the classes Long Grain Milled Rice, Medium Grain Milled Rice, Short Grain Milled Rice, and Mixed Milled Rice. (See also § 868.315.)
868.311 Grades and grade requirements for the class Second Head Milled Rice. (See also § 868.315.)
868.312 Grades and grade requirements for the class Screenings Milled Rice. (See also § 868.315.)
868.313 Grades and grade requirements for the class Brewers Milled Rice. (See also § 868.315.)
868.314 Grade designations.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

868.315 Special grades and special grade requirements.
868.316 Special grade designation.

AUTHORITY: 7 U.S.C. 1621–1627.

## Subpart A—Regulations

SOURCE: 53 FR 3722, Feb. 9, 1988, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

DEFINITIONS

### § 868.1 Meaning of terms.

(a) *Construction.* Words used in the singular form are considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms have the meanings given for them in this paragraph.

(1) *Act.* The Agricultural Marketing Act of 1946, as amended (secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621 *et seq.*).

(2) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom the Administrator's authority has been delegated.

(3) *Appeal inspection service.* A review by the Service of the result(s) of an original inspection or retest inspection service.

(4) *Applicant.* An interested person who requests any inspection service with respect to a commodity.

(5) *Authorized inspector.* A Department employee authorized by the Administrator to inspect a commodity in accordance with the Act, regulations, standards, and instructions.

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the result(s) of an original inspection or appeal inspection service on graded commodities.

(7) *Board of Appeals and Review or Board.* The Board of Appeals and Review of the Service that performs Board appeal inspection services.

(8) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by a cooperator.

(9) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk, sacked, or packaged commodity.

(10) *Commodity.* Agricultural commodities and products thereof that the Secretary has assigned to the Service for inspection under the Act, including but not limited to dry beans, grain, hops, lentils, oilseeds, dry peas, split peas, and rice.

(11) *Continuous inspection.* The conduct of inspection services in an approved plant where one or more official inspection personnel are present during the processing of a commodity to make in-process examinations of the preparation, processing, packing, and warehousing of the commodity and to determine compliance with applicable sanitation requirements.

(12) *Contract service.* Any service performed under a contract between an applicant and the Service.

(13) *Contractor.* Any person who enters into a contract with the Service or with a cooperator to perform specified inspection services.

(14) *Cooperator.* An agency or department of the Federal Government which has an interagency agreement or State agency which has a reimbursable agreement with the Service.

(15) *Cooperator inspection service.* The inspection service provided by a cooperator under the regulations. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the agreement.

(16) *Department.* The United States Department of Agriculture.

(17) *Factor.* A quantified physical or chemical property identified in official standards, specifications, abstracts, contracts, or other documents whose measurement describes a specific quality of a commodity.

(18) *Field office.* An office of the Service designated to perform, monitor, or supervise inspection services.

(19) *Grade.* A grade designating a level of quality as defined in the commodity standards promulgated pursuant to the Act.

(20) *Graded commodity.* Commodities for which the Service has promulgated Standards under the Act and commodities which are tested by the Service at a field office or by a cooperator for specific physical factors using approved equipment and an inspector's interpretation of visual conditions.

(21) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(22) *Inspection certificate.* A written or printed official document which is approved by the Service and which shows the results of an inspection service performed under the Act.

(23) *Inspection service.* (i) Applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other quality designation, the quantity, or condition of commodity; performing condition of container, carrier stowage examinations; and any other services as related to commodities, as necessary; and (ii) issuing an inspection certificate.

(24) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(25) *Interagency agreement.* An agreement between the Service and other agencies or departments of the Federal Government to conduct commodity inspection services as authorized in the Act.

(26) *Interested person.* Any person having a contract or other financial interest in a commodity as the owner, seller, purchaser, warehouseman, carrier, or otherwise.

(27) *Licensee.* Any person licensed by the Service.

(28) *Nongraded commodity.* Nonprocessed commodities which are chemically tested for factors not included in the Standards under the Act or the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) and processed commodities.

(29) *Nonregular workday.* Any Sunday or holiday.

(30) *Official inspector.* Any official personnel who performs, monitors, or supervises the performance of inspection service and certifies the results of inspection of the commodity.

(31) *Official personnel.* Any authorized Department employee or person licensed by the Administrator to perform all or specified functions under the Act.

(32) *Official sampler.* Any official personnel who performs, monitors, or supervises the performance of sampling of a commodity.

(33) *Official technician.* Any official personnel who performs, monitors, or supervises the performance of specified inspection services and certifies the results thereof, other than certifying the grade of a commodity.

(34) *Origin.* The geographical area or place where the commodity is grown.

(35) *Original inspection service.* An initial inspection of a community.

(36) *Person.* Any individual, partnership, association, corporation, or other business entity.

(37) *Plant.* The premises, buildings, structure, and equipment (including but not limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of commodities.

(38) *Regular workday.* Any Monday through Saturday that is not a holiday.

(39) *Regulations.* The regulations in this part.

(40) *Reimbursable agreement.* An agreement between the Service and State agencies to conduct commodity inspection services authorized pursuant to the Act.

(41) *Retest inspection service.* To test, using the same laboratory procedures, a factor(s) of nongraded commodities previously tested.

(42) *Secretary.* The Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

(43) *Service.* The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

(44) *Service representative.* An employee authorized by the Service or a person licensed by the Administrator.

(45) *Specification.* A document which clearly and accurately describes the essential and technical requirements for items, materials, or services including requested inspection procedures.

(46) *Standards.* The commodity standards in this part that describe the physical and biological condition of a commodity at the time of inspection.

(47) *Submitted sample.* A sample submitted by or for an applicant for inspection.

(48) *Test.* A procedure to measure a factor using specialized laboratory equipment involving the application of established scientific principles and laboratory procedures.

[53 FR 3722, Feb. 9, 1988, as amended at 60 FR 5835, Jan. 31, 1995. Redesignated at 60 FR 16364, Mar. 30, 1995, and amended at 63 FR 29531, June 1, 1998; 70 FR 69250, Nov. 15, 2005]

ADMINISTRATION

### § 868.5 Administrator.

The Administrator, under the authority delegated by the Secretary, is charged with administering the programs and functions authorized under the Act and the regulations concerning those commodities assigned by the Secretary to the Service.

### § 868.6 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*).

### § 868.7 Procedures for establishing regulations and standards.

Notice of proposals to prescribe, amend, or revoke regulations and standards shall be published in accordance with applicable provisions of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*). Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations or standards may do so in accordance with 7 CFR 1.28 of the regulations of the Office of the Secretary of Agriculture.

### § 868.8 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraph (b) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should be filed with the Service in accordance with 7 CFR 1.133 of the regulations of the Office of the

Secretary of Agriculture and these regulations and the instructions.

(b) *Retest inspection and appeal inspection service.* Complaints involving the results of inspection services shall, to the extent practicable, be submitted as requests for retest inspection, appeal inspection, or Board appeal inspection services as set forth in these regulations.

(Approved by the Office of Management and Budget under control number 0580–0011)

### § 868.9 Provisions for hearings.

Opportunities shall be provided for hearings either in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR part 1, subpart H) or in accordance with FGIS procedures as appropriate.

### § 868.10 Information about the Service, Act, and regulations.

Information about the Service, Act, regulations, standards, rules of practice, instructions, and other matters related to the inspection of commodities may be obtained by telephoning or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

### § 868.11 Public information.

(a) *General.* This section is issued in accordance with §§1.1 through 1.23 of the regulations of the Secretary in part 1, subpart A, of subtitle A of title 7 (7 CFR 1.1 through 1.23), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.5, will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250. The public may request access to these materials 8:00 a.m.–4:30 p.m. Monday through Friday except for holidays.

(c) *Indexes.* The Service shall maintain an index of all material required to be made available in 7 CFR 1.5. Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6 and shall be addressed as follows: Office of the Administrator, Federal Grain Inspection Service, FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454.

(e) *FOIA Appeals.* Any person whose request, under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.13. Appeals shall be addressed to the Administrator, Federal Grain Inspection Service, FOIA Appeal, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454.

(f) *Disclosure of information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the applicant, divulge or make known in any manner any facts or information acquired pursuant to the Act, regulations, or instructions except as authorized by the Administrator, by a court of competent jurisdiction, or otherwise by law.

[53 FR 3722, Feb. 9, 1988, as amended 54 FR 5923, Feb. 7, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.12 Identification.

All official personnel shall have in their possession and present upon request, while on duty, the means of identification furnished to them by the Department.

### § 868.13 Regulations not applicable for certain purposes.

These regulations do not apply to the inspection of grain under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) or the inspection

of commodities under the United States Warehouse Act, as amended (7 U.S.C. 241 *et seq.*).

CONDITIONS FOR OBTAINING OR WITHHOLDING SERVICE

### § 868.20 Availability of services.

(a) *Original inspection service.* Original inspection services are available according to this section and §§ 868.40 through 868.44.

(b) *Retest inspection and appeal inspection services.* Retest inspection, appeal inspection, and Board appeal inspection services are available according to §§ 868.50 through 868.52 and §§ 868.60 through 868.63.

(c) *Proof of authorization.* A cooperator or the Service may request satisfactory proof that an applicant is an interested person or their authorized agent.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.21 Requirements for obtaining service.

(a) *Consent and agreement by applicant.* In submitting a request for inspection service, the applicant and the owner of the commodity consent to the requirements specified in paragraphs (b) through (j) of this section.

(b) *Written confirmation.* Verbal requests for inspection service shall be confirmed in writing upon request. Each written request shall be made in English and shall include:

(1) The date filed;

(2) The identification, quantity, and location of the commodity;

(3) The type of service(s) requested;

(4) The name and mailing address of the applicant and, if made by an authorized agent, the agent's name and mailing address; and

(5) Any other relevant information that the official with whom the application is filed may request.

A written request or a written confirmation of a verbal request shall be signed by the applicant or a duly authorized agent.

(c) *Names and addresses of interested persons.* When requested, each applicant for inspection service shall show on the application form the name and mailing address of each known interested person.

(d) *Surrender of superseded certificates.* Superseded certificates must be promptly surrendered.

(e) *Accessibility*—(1) *Commodities.* Each commodity lot inspected shall be arranged so the entire lot may be examined or, if necessary, a representative sample, as appropriate, can be obtained. If the entire lot is not accessible for examination or a representative sample cannot be obtained, the inspection shall be restricted to an examination or sampling of the accessible portion and the results certified as stated in § 868.34.

(2) *Origin records.* When an applicant requests origin inspection, the records indicating the origin of the commodity to be inspected shall be made accessible for examination and verification by official personnel.

(f) *Plant examination.* Plant surveys shall be performed upon request. Survey results shall be reported in writing to a designated plant official. If the plant is approved as a result of the survey, inspection service may begin or continue at a time agreed upon by the plant management and the cooperator or Service. If the plant is not approved as a result of the survey, inspection service shall be conditionally withheld pursuant to the procedures in § 868.24.

(g) *Working space.* An applicant must provide adequate and separate space when inspection service is performed at a plant.

(h) *Loading and unloading conditions.* Each applicant for inspection service shall provide or arrange for suitable conditions in the—

(1) Loading and unloading areas and the truck and railroad holding areas;

(2) Pier or dock areas;

(3) Deck and stowage areas of a carrier;

(4) Other service areas; and

(5) Equipment used in loading or unloading, processing, and handling the commodity.

Suitable conditions are those which will facilitate accurate inspection, maintain the quantity and the quality of the commodity that is to be inspected, and not be hazardous to the health and safety of official personnel as prescribed in the instructions.

(i) *Timely arrangements.* Requests for inspection service shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. ''Timely manner'' shall mean not later than 2 p.m., local time, of the preceding business day.

(j) *Payment of bills.* Each applicant for inspection service shall pay bills for the service pursuant to §§ 868.90–868.92.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.22 Withdrawal of request for inspection service by applicant.

An applicant may withdraw a request for inspection service any time before official personnel release results, either verbally or in writing. Reimbursement of expenses, if any, shall be made pursuant to § 868.26.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.23 Dismissal of request for inspection service.

(a) *Conditions for dismissal*—(1) *General.* A cooperator or the Service shall dismiss requests for inspection service when:

(i) Performing the requested service is not practicable or possible.

(ii) The cooperator or the Service lacks authority under the Act or regulations to provide the inspection service requested or is unable to comply with the Act, regulations, standards, or instructions.

(iii) Sufficient information is not available to make an accurate determination.

(2) *Original inspection service.* A request for original inspection service shall be dismissed if an original inspection has already been performed and circumstances do not prevent a retest inspection, appeal inspection, or Board appeal inspection from being performed on the same lot.

(3) *Retest inspection service.* A request for a retest inspection service shall be dismissed by official personnel when:

(i) The factor requested was not tested during the original inspection;

(ii) The condition of the commodity has undergone a material change;

(iii) A representative file sample is not available;

(iv) The applicant requests that a new sample be obtained;

(v) The request is for a graded commodity; or

(vi) The reasons for the retest inspection are frivolous.

(4) *Appeal inspection service.* A request for an appeal inspection service shall be dismissed by official personnel when:

(i) The scope is different from the scope of the original inspection service;

(ii) The condition of the commodity has undergone a material change;

(iii) The request specifies a file sample and a representative file sample is not available;

(iv) The applicant requests that a new sample be obtained and a new sample cannot be obtained; or

(v) The reasons for the appeal inspection are frivolous.

(5) *Board appeal inspection service.* A request for a Board appeal inspection service shall be dismissed by official personnel when:

(i) The scope is different from the scope of the original inspection service;

(ii) The condition of the commodity has undergone a material change;

(iii) A representative file sample is not available;

(iv) The applicant requests that a new sample be obtained; or

(v) The reasons for the Board appeal inspection are frivolous.

(b) *Procedure for dismissal.* The cooperator or the Service shall notify the applicant of the proposed dismissal of service. If correctable, the applicant will be afforded reasonable time to take. corrective action or to demonstrate there is no basis for the dismissal. If corrective action has not been adequate, the applicant will be notified of the decision to dismiss the request for service, and any results of service shall not be released.

### § 868.24 Conditional withholding of service.

(a) *Conditional withholding.* A cooperator or the Service shall conditionally withhold service when an applicant fails to meet any requirement prescribed in § 868.21.

(b) *Procedure for withholding.* The cooperator or the Service shall notify the applicant of the reason for the proposal to conditionally withhold service. The applicant will then be afforded reasonable time to take corrective action or to demonstrate that there is no basis for withholding service. If corrective action has not been adequate, the applicant will be notified of the decision to withhold service; and any results of service shall not be released.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.25 Denial or withdrawal of service.

(a) *General.* Service may be denied or withdrawn because of (1) any willful violation of the Act, regulations, standards, or instructions or (2) any interference with or obstruction of any official personnel in the performance of their duties by intimidation, threat, assault, or any other improper means.

(b) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR part 1, subpart H) shall be followed in the denial or withdrawal of service.

### § 868.26 Expenses of the cooperator or the Service.

For any request that has been withdrawn, dismissed, or withheld under §§ 868.22, 868.23, or 868.24, respectively, each applicant shall pay expenses incurred by the cooperator or the Service.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

## INSPECTION METHODS AND PROCEDURES

### § 868.30 Methods and order of performing inspection service.

(a) *Methods*—(1) *General.* All sampling and inspection services performed by official personnel shall be made in accordance with the regulations, standards, and the instructions.

(2) *Lot inspection service.* A lot inspection service shall be based on official personnel obtaining representative samples, examining the commodity in the entire lot, and making an accurate analysis of the commodity on the basis of the samples.

(3) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform an accurate, complete analysis. The sample size will be prescribed in the instructions. If a complete analysis cannot be performed because of an inadequate sample size or other conditions, the request shall be dismissed or a factor only inspection may be performed upon request.

(b) *Order of service.* Inspection services shall be performed, to the extent practicable, in the order in which requests for service are received.

(c) *Recording receipt of documents.* Each document submitted by or on behalf of an applicant for inspection service shall be promptly stamped or similarly marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* (1) Official personnel shall not perform or participate in performing an inspection service on a commodity or a carrier or container in which the official personnel have a direct or indirect financial interest.

(2) Official personnel shall not perform, participate in performing, or issue a certificate if the official personnel participated in a previous inspection or certification of the lot unless there is only one authorized person available at the time and place of the requested inspection service.

### § 868.31 Kinds of inspection services.

(a) *General.* The inspection of commodities shall be according to the—

(1) Standards of class, grade, other quality designation, quantity, or condition for such commodities promulgated by the Administrator; or

(2) Specifications prescribed by Federal agencies; or

(3) Specifications of trade associations or organizations; or

(4) Other specifications as requested by applicant; or

(5) The instructions.

The kinds of services provided and the basis for performing the services include those specified in paragraphs (b) through (m) of this section. Some or all of these services are provided when performing a complete inspection service.

(b) *Quality inspection service.* This service consists of official personnel—

(1) Obtaining representative sample(s) of an identified commodity lot;

(2) Examining, grading, or testing the sample(s);

(3) Examining relevant records for the lot; and

(4) Certifying the results.

(c) *Submitted sample inspection service.* This service consists of official personnel grading or testing a sample submitted by the applicant and certifying the results.

(d) *Examination service.* This service consists of official personnel examining supplies without the use of special laboratory equipment or procedures to determine conformance to requirements requested by the applicant and certifying the results.

(e) *Checkweighing service (container).* This service consists of official personnel—

(1) Weighing a selected number of containers from a commodity lot;

(2) Determining the estimated total gross, tare, and net weights or the estimated average gross or net weight per filled container; and

(3) Certifying the results.

(f) *Bulk weighing service.* This service consists of official personnel—

(1) Completely supervising the loading or the unloading of an identified lot of bulk or containerized commodity,

(2) Physically weighing or completely supervising the weighing of the commodity; and

(3) Certifying the results.

(g) *Checkloading service.* This service consists of official personnel—

(1) Performing a stowage examination;

(2) Computing the number of filled commodity containers loaded aboard the carrier;

(3) Observing the condition of commodity containers loaded aboard the carrier;

(4) If practicable, sealing the carrier; and

(5) Certifying the results.

(h) *Checkcounting service.* This service consists of official personnel determining the total number of filled outer containers in a lot to determine that the number of containers shown by the applicant is correct and certifying the results.

(i) *Condition inspection service.* This service consists of official personnel determining the physical condition of the commodity by determining whether an identifiable commodity lot is water damaged, fire damaged, or has rodent or bird contamination, insect infestation, or any other deteriorating condition and certifying the results.

(j) *Condition of food containers service.* This service consists of official personnel determining the degree of acceptability of the containers with respect to absence of defects which affect the serviceability, including appearance as well as usability, of the container for its intended purpose and certifying the results.

(k) *Observation of loading service.* This service consists of official personnel determining that an identified lot has been moved from a warehouse or carrier and loaded into another warehouse or carrier and certifying the results.

(l) *Plant approval service.*[1] This service consists of official personnel performing a plant survey to determine if the plant premises, facilities, sanitary conditions, and operating methods are suitable to begin or continue inspection service.

(m) *Stowage examination service.* This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances and foreign odor; and suitable to store or carry commodities and certifying the results.

[1] Compliance with the requirements in this paragraph does not excuse failure to comply with all applicable sanitation rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

### § 868.32 Who shall inspect commodities.

Official commodity inspections shall be performed only by official personnel.

### § 868.33 Sample requirements; general.

(a) *Samples for lot inspection service*—(1) *Original lot inspection service.* The sample(s) on which the original inspection is determined shall be—

(i) Obtained by official personnel;

(ii) Representative of the commodity in the lot;

(iii) Protected by official personnel from manipulation, substitution, and improper or careless handling; and

(iv) Obtained within the prescribed area of responsibility of the cooperator or field office performing the inspection service.

(2) *Retest lot inspection service.* The sample(s) on which the retest is determined shall meet the requirements of paragraph (a)(1) of this section. The retest inspection shall be performed on the basis of a file sample(s), and the samples shall meet the requirements prescribed in § 868.35(e).

(3) *Appeal lot inspection service.* For an appeal lot inspection service, the sample(s) on which the appeal is determined shall meet the requirements of paragraph (a)(1) of this section. If the appeal inspection is performed on the basis of a file sample(s), the samples shall meet the requirements prescribed in § 868.35(e). In accordance with § 868.61(b), an applicant may request that a new sample be obtained and examined as part of the appeal inspection service.

(4) *Board appeal lot inspection service.* A Board appeal lot inspection service shall be performed on the basis of file sample.

(b) *Sampler requirement.* An official sampler shall sample commodities and forward the samples to the appropriate cooperator or field office or other location as specified. A sampling report signed by the sampler shall accompany each sample. The report shall include the identity, quantity, and location of the commodity sampled; the name and mailing address of the applicant; and all other information regarding the lot as may be required.

(c) *Representative sample.* A sample shall not be considered representative of a commodity lot unless the sample—

(1) Has been obtained by official personnel;

(2) Is of the size prescribed in the instructions; and

(3) Has been obtained, handled, and submitted in accordance with the instructions.

(d) *Protecting samples.* Official personnel shall protect samples from manipulation, substitution, and improper and careless handling which would deprive the samples of their representativeness or which would change the physical and chemical properties of the commodity from the time of sampling until inspection services are completed and file samples have been discarded.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.34 Partial inspection.

When the entire lot is not accessible for examination or a representative sample cannot be obtained from the entire lot, the certificate shall state the estimated quantity of the commodity in the accessible portion and the quantity of the entire lot. The inspection shall be limited to the accessible portion. In addition, the words ''Partial Inspection'' shall be printed or stamped on the certificate.

### § 868.35 Sampling provisions by level of service.

(a) *Original inspection service*—(1) *Lot inspection service.* Each original lot inspection service shall be made on the basis of one or more representative samples obtained by official personnel from the commodity in the lot and forwarded to the appropriate location.

(2) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Retest inspection service.* Each retest inspection service performed on a commodity lot or a submitted sample shall be based on an analysis of the file sample.

(c) *Appeal inspection service*—(1) *Lot inspection service.* Each appeal inspection service on a commodity lot shall be made on the basis of a file sample or, upon request, a new sample.

(2) *Submitted sample service.* Each appeal inspection service on the commodity in a submitted sample shall be based on an analysis of the file sample.

(d) *Board appeal inspection service.* Each Board appeal inspection service performed on a commodity lot or submitted sample shall be based on an analysis of the file sample.

(e) *Use of file samples*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions shall be considered representative for retest inspection, appeal inspection, and Board appeal inspection service if: (i) The file samples have remained at all times in the custody and control of the official personnel that performed the inspection service and (ii) the official personnel who performed the inspection service in question and those who are to perform the retest inspection, the appeal inspection, or the Board appeal inspection service determines that the samples were representative of the commodity at the time the inspection service was performed and that the quality or condition of the commodity in the samples has not since changed.

(2) *Certificate statement.* The certificate for a retest inspection, appeal inspection, or Board appeal inspection service which is based on a file sample shall show the statement ''Results based on file sample.''

### § 868.36 Loss of identity.

(a) *Lots.* The identity of a packaged lot, bulk lot, or sublot of a commodity shall be considered lost if:

(1) A portion of the commodity is unloaded, transferred, or otherwise removed from the carrier or location after the time of original inspection, unless the identity is preserved; or

(2) More commodity or other material, including a fumigant or insecticide, is added to the lot after the original inspection was performed, unless the addition of the fumigant or insecticide was performed in accordance with the instructions; or

(3) At the option of official personnel performing an appeal inspection or Board appeal inspection service, the identity of a commodity in a closed carrier or container may be considered lost if the carrier or container is not sealed or the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed or (2) the identification has been changed since the original inspection.

(c) *Submitted sample.* The identity of a submitted sample of a commodity shall be considered lost if:

(1) The identifying number, mark, or symbol for the sample is lost or destroyed; or

(2) The sample has not been retained and protected by official personnel as prescribed in the regulations and the instructions.

## ORIGINAL INSPECTION SERVICE

### § 868.40 Who may request original inspection service.

Any interested person may apply for inspection service.

### § 868.41 Contract service.

Any interested person may enter into a contract with a cooperator or the Service whereby the cooperator or Service will provide original inspection services for a specified period, and the applicant will pay a specific fee.

### § 868.42 How to request original inspection service.

(a) *General.* Requests may be made verbally or in writing. Verbal requests shall be confirmed in writing when requested by official personnel. All written requests shall include the information specified in § 868.21. Copies of request forms may be requested from the cooperator or the Service. If all required documentation is not available when the request is made, it shall be provided as soon as it is available. At their discretion, official personnel may withhold inspection service pending receipt of the required documentation.

(b) *Request requirements.* Requests for original inspection service, other than submitted sample inspections, must be made with the cooperator or the Service responsible for the area in which the service will be provided. Requests for submitted sample inspections may

be made with any cooperator or any field office that provides original inspection service. Requests for inspection of commodities during loading, unloading, handling, or processing shall be received far enough in advance so official personnel can be present.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.44 New original inspection.

When circumstances prevent a retest inspection, appeal inspection, or Board appeal inspection, an applicant may request a new original inspection on any previously inspected lot; except that a new original inspection may not be performed on an identifiable commodity lot which, as a result of a previous inspection, was found to be contaminated with filth, other than insect fragments in nongraded processed products, or to contain a deleterious substance. A new original inspection shall be based on a new sample and shall not be restricted to the scope of any previous inspection. A new original inspection certificate shall not supersede any previously issued certificate.

RETEST INSPECTION SERVICE

### § 868.50 Who may request retest inspection service.

(a) *General.* Any interested person may request a retest inspection service on nongraded commodities. When more than one interested person requests a retest inspection service, the first interested person to file is the applicant of record. Only one retest inspection service may be performed on any original inspection service.

(b) *Scope of request.* A retest inspection service may be requested for any or all quality factors tested but shall be limited to analysis of the file sample.

(Approved by the Office of Management and Budget under control number 0580–0012)

### § 868.51 How to request retest inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original inspection service was performed. Verbal requests shall be confirmed in writing, upon request, as specified in § 868.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed and the documentation required by § 868.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.52 Certificating retest inspection results.

(a) *General.* Retest inspection certificates shall be issued according to § 868.70 and instructions. The certificate shall show the results of the factor(s) retested and the original results not included in the retest service.

(b) *Required statements on retest certificates.* Each retest inspection certificate shall show the statements required by this section, § 868.71, and the instructions.

(1) Each retest inspection certificate shall clearly show the term ''Retest'' and a statement identifying the superseded original certificate. The superseded certificate shall be considered null and void as of the date of the retest certificate. When applicable, the certificate shall also show a statement as to which factor(s) result is based on the retest inspection service and that all other results are those of the original inspection service.

(2) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked ''Void.'' If the superseded certificate is not in the custody of the Service at the time the retest certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the retest certificate.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

APPEAL INSPECTION SERVICE

### §868.60 Who may request appeal inspection service.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection service. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first interested person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or retest inspection service for nongraded commodities. Only one Board appeal inspection may be obtained from any original or appeal inspection service for graded commodities. Board appeal inspection shall be performed on the basis of the file sample.

(b) *Kind and scope of request.* When the results for more than one kind of service are reported on a certificate, an appeal inspection or Board appeal inspection service, as applicable, may be requested on any or all kinds of services reported on the certificate. The scope of an appeal inspection service will be limited to the scope of the original inspection or, in the case of a Board appeal inspection service, the original or appeal inspection service. A request for appeal inspection of a retest inspection will be based upon the scope of the original inspection. If the request specifies a different scope, the request shall be dismissed. Provided, however, that an applicant for service may request an appeal or Board appeal inspection of specific factor(s) or official grade and factors. In addition, appeal and Board appeal inspection for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel.

(Approved by the Office of Management and Budget under control number 0580–0013).

[53 FR 3722, Feb. 9, 1988. Redesignated at 60 FR 16364, Mar. 30, 1995 and amended at 70 FR 69250, Nov. 15, 2005]

### §868.61 How to request appeal inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be made with the Board of Appeals and Review or the field office that performed the appeal inspection. Verbal requests must be confirmed in writing, upon request, as specified in §868.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is made the documentation required by §868.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* (1) This subparagraph is applicable to rice inspection only. Except as may be agreed upon by the interested persons, the application shall be made: (i) Before the rice has left the place where the inspection being appealed was performed and (ii) no later than the close of business on the second business day following the date of the inspection being appealed. However, the Administrator may extend the time requirement as deemed necessary.

(2) Subject to the limitations of paragraph (b)(3) of this section, the applicant may request that an appeal inspection be based on: (i) The file sample or (ii) a new sample. However, an appeal inspection shall be based on a new sample only if the lot can positively be identified by official personnel as the one that was previously inspected and the entire lot is available and accessible for sampling and inspection. Board appeals shall be on the basis of the file sample.

(3) An appeal inspection shall be limited to a review of the sampling procedure and an analysis of the file sample when, as a result of a previous inspection, the commodity was found to be contaminated with filth (other than insect fragments in nongraded processed products) or to contain a deleterious substance. If it is determined that the sampling procedures were improper, a new sample shall be obtained if the lot can be positively identified as the lot which was previously inspected and the entire lot is available and accessible for sampling and inspection.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.62 Who shall perform appeal inspection service.

(a) *Appeal.* For graded commodities, the appeal inspection service shall be performed by the field office responsible for the area in which the original inspection was performed. For nongraded commodities, the appeal inspection service shall be performed by the Service's Commodity Testing Laboratory.

(b) *Board appeal.* Board appeal inspection service shall be performed only by the Board of Appeals and Review. The field office will act as a liaison between the Board of Appeals and Review and the applicant.

### § 868.63 Certificating appeal inspection results.

(a) *General.* An appeal inspection certificate shall be issued according to § 868.70 and instructions. Except as provided in paragraph (b)(2) of this section, only the results of the appeal inspection or Board appeal inspection service shall be shown on the appeal inspection certificate.

(b) *Required statements.* Each appeal inspection certificate shall show the statements required by this section, § 868.71, and instructions.

(1) Each appeal inspection certificate shall clearly show: (i) The term ''Appeal'' or ''Board Appeal'' and (ii) a statement identifying the superseded certificate. The superseded certificate shall be considered null and void as of the date of the appeal inspection or Board appeal inspection certificate.

(2) When the results for more than one kind of service are reported on a certificate, the appeal or Board appeal inspection certificate shall show a statement of which kind of service(s) results are based on the appeal or Board appeal inspection service and that all other results are those of the original inspection, retest inspection, or appeal inspection service.

(3) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked ''Void.'' If the superseded original inspection, retest inspection, or appeal inspection certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(c) *Finality of Board appeal inspection.* A Board appeal inspection shall be the final appeal inspection service except that for nongraded commodities an appeal shall be the final appeal inspection.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

## OFFICIAL CERTIFICATES

### § 868.70 Official certificates; issuance and distribution.

(a) *Required issuance.* An inspection certificate shall be issued to show the results of each kind and each level of inspection service.

(b) *Distribution*—(1) *Original.* The original and one copy of each inspection certificate shall be distributed to the applicant or the applicant's order. In addition, one copy of each inspection certificate shall be filed with the office providing the inspection; and, if the inspection is performed by a cooperator, one copy shall be forwarded to the appropriate field office. If requested by the applicant prior to issuance of the inspection certificate, additional copies not to exceed a total of three copies will be furnished at no extra charge.

(2) *Retest and appeal inspection service.* In addition to the distribution requirements in paragraph (b)(1) of this section, one copy of each retest or appeal inspection certificate will be distributed to each interested person of record or the interested person's order and to the cooperator or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies in excess of three may be assessed according to the fee schedules established by the cooperator or the Service.

(c) *Prompt issuance.* An inspection certificate shall be issued before the close of business on the business day following the date the inspection is completed.

(d) *Who may issue a certificate*—(1) *Authority.* Certificates for inspection services may be issued only by official personnel who are specifically authorized

or licensed to perform and certify the results reported on the certificate.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the inspection is performed by one person, the certificate should be issued by that person. If an inspection is performed by two or more persons, the certificate should be issued by the person who makes the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the inspection being certificated.

(e) *Name requirement.* The name or the signature, or both, of the person who issued the inspection certificate shall be shown on the original and all copies of the certificate.

(f) *Authorization to affix names*—(1) *Requirements.* The names or the signatures, or both, of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. The agent affixing the name or signature, or both, shall: (i) Be employed by a cooperating agency or the Service, (ii) have been designated to affix names or signatures, or both, and (iii) hold a power of attorney from the person whose name or signature, or both, will be affixed. The power of attorney shall be on file with the employing cooperating agency or the Service as appropriate.

(2) *Initialing.* When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name or signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested person, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification; when prohibited.* An official certificate shall not be issued for service after the request for an inspection service has been withdrawn or dismissed.

### § 868.71 Official certificate requirements.

Official certificates shall—

(a) Be on standard printed forms prescribed in the instructions;

(b) Be in English;

(c) Be typewritten or handwritten in ink and be clearly legible;

(d) Show the results of inspection services in a uniform, accurate, and concise manner;

(e) Show the information required by §§ 868.70–868.75; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Administrator.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.72 Certification of results.

(a) *General.* Each official certificate shall show the results of the inspection service.

(b) *Graded commodities.* Each official certificate for graded commodities shall show—

(1) The class, grade, or any other quality designation according to the official grade standards;

(2) All factor information requested by the applicant; and

(3) All grade determining factors for commodities graded below the highest quality grade.

### § 868.73 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates must be verified by the individual whose name or signature, or both, is shown on the official certificate or by the authorized agent who affixed the name or signature, or both. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance.* No corrections, erasures, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new official certificate shall be prepared and

issued and the incorrect certificate marked ''Void.'' Otherwise, errors may be corrected provided that—

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and

(3) The corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance*—(1) *General.* If errors are found on an official certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show—

(i) The terms ''Corrected Original'' and ''Corrected Copy,''

(ii) A statement identifying the superseded certificate and the corrections,

(iii) A statement indicating the superseded certificate was not surrendered when the incorrect certificate was not submitted; and

(iv) A new serial number.

In addition, the incorrect certificate shall be marked ''Void'' when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

### § 868.74 Divided-lot certificates.

(a) *General.* When commodities are offered for inspection and are certificated as a single lot, the applicant may exchange the inspection certificate for two or more divided-lot certificates.

(b) *Application.* Requests for divided-lot certificates shall be made—

(1) In writing;

(2) By the applicant who made the initial request;

(3) To the office that issued the outstanding certificate;

(4) Within 5 business days of the outstanding certificate date; and

(5) Before the identity of the commodity has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show an aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall—

(1) Be in the custody of the cooperator or the Service;

(2) Be marked ''Void,'' and

(3) Show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show—

(1) A statement indicating the commodity was inspected as an undivided lot;

(2) The terms ''Divided-Lot Original,'' and the copies shall show ''Divided-Lot Copy;''

(3) The same serial number with numbered suffix (for example, 1764–1, 1764–2, 1764–3, and so forth); and

(4) The quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 868.70(b).

(g) *Limitations.* After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.75 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed—

(1) In writing;

(2) By the applicant who requested the service covered by the lost or destroyed certificate; and

(3) With the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show: (1) The terms ''Duplicate Original,'' and the copies shall show ''Duplicate Copy'' and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 868.70(b).

(d) *Limitations.* Duplicate certificates shall not be issued for certificates that have been superseded.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

LICENSED INSPECTORS, TECHNICIANS, AND SAMPLERS

### § 868.80 Who may be licensed.

(a) *Inspectors.* The Administrator may license any person to inspect commodities and to perform related services if the individual—

(1) Is employed by a cooperator, is a contractor, or is employed by a contractor;

(2) Possesses the qualifications prescribed in the instructions; and

(3) Has no interest, financial or otherwise, direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be inspected.

The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(b) *Technicians or samplers.* The Administrator may license any person as a technician to perform official specified laboratory functions, including sampling duties and related services, or as a sampler to draw samples of commodities and perform related services if the individual: (1) Possesses proper qualifications as prescribed in the instructions and (2) has no interest, financial or otherwise direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be chemically analyzed, mechanically tested, sampled, and so forth. The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995; 63 FR 29531, June 1, 1998]

### § 868.81 Licensing procedures.

(a) *Application.* An application for a license, the renewal of a license, or the return of a suspended license shall be submitted to the Service on forms furnished by the Service. Each application shall be in English, be typewritten or legibly written in ink, show all information prescribed by the application form, and be signed by the applicant.

(b) *Examinations and reexaminations.* Applicants for a license and individuals who are licensed to perform any or all inspection services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the inspection functions for which they desire to be or are licensed.

(c) *Termination*—(1) *Procedure.* Each license shall terminate according to the termination date shown on the license and as specified by the schedule in this paragraph. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

TERMINATION SCHEDULE

| Last name beginning with | Termination date |
|---|---|
| A | January. |
| B | February. |
| C, D | March. |
| E, F, G | April. |
| H, I, J | May. |
| K, L | June. |
| M | July. |
| N, O, P, Q | August. |
| R | September. |
| S, T, U, V | October. |

TERMINATION SCHEDULE—Continued

| Last name beginning with | Termination date |
|---|---|
| W | November. |
| X, Y, Z | December. |

The Service shall issue a termination notice 60 days before the termination date. The notice shall give detailed instructions for requesting renewal of license, state whether a reexamination is required, and, if a reexamination is required, give the scope of the examination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed by the termination date.

(2) *Exception.* The license of an individual under contract with the Service shall terminate upon termination of the contract.

(d) *Surrender of license.* Each license that is terminated or which is suspended or revoked under § 868.84 shall be promptly surrendered to the Administrator or other official of the Service designated by the Administrator.

(Approved by the Office of Management and Budget under control number 0580–0012)

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.82 Voluntary cancellation or suspension of license.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 868.81(a) and (b); a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.83 Automatic suspension of license by change in employment.

A license issued to an individual shall be automatically suspended when the individual ceases to be employed by the cooperator. If the individual is reemployed by the cooperator or employed by another cooperator within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 868.81(a) and (b).

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.84 Suspension or revocation of license.

(a) *General.* (1) An inspector's, technician's, or sampler's license may be suspended or revoked if the licensee: (i) Willfully, carelessly, or through incompetence fails to perform the duties specified in the Act, regulations, standards, or the instructions or (ii) becomes incapable of performing required duties.

(2) A license may not be suspended or revoked until the individual: (i) Has been served notice, in person or by registered mail, that suspension or revocation of the license is under consideration for reasons set out in the notice and (ii) has been given an opportunity for a hearing.

(b) *Procedure for summary action.* In cases where the public health, interest, or safety require, the Administrator may summarily suspend an inspector's, technician's, or sampler's license without prior hearing. In such cases, the licensee shall be advised of the factors which appear to warrant suspension or revocation of the license. The licensee shall be accorded an opportunity for a hearing before the license is finally suspended or revoked.

(c) *Procedures for other than summary action.* Except in cases of willfulness or those described in paragraph (b) of this section, the Administrator, before instituting proceedings for the suspension or revocation of a license, shall provide the licensee an opportunity to demonstrate or achieve compliance with the Act, regulations, standards, and instructions. If the licensee does not demonstrate or achieve compliance, the Administrator may institute proceedings to suspend or revoke the license.

(The information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0580–0012)

FEES

## § 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1—HOURLY RATES [1,3]

[Fees for inspection of commodities other than rice]

| | |
|---|---|
| Hourly Rates (per service representative): | |
| Monday to Friday | $34.20 |
| Saturday, Sunday, and Holidays | 44.40 |
| Miscellaneous Processed Commodities: [2] | |
| (1) Additional Tests (cost per test, assessed in addition to the hourly rate): | |
| (i) Aflatoxin Test (Thin Layer Chromatography) | 51.40 |
| (ii) Falling Number | 12.50 |
| (iii) Aflatoxin Test Kit | 7.50 |
| Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses): | |
| (1) Additional Tests—Unit Rates (Beans, Peas, Lentils): | |
| (i) Field run (per lot or sample) | 23.00 |
| (ii) Other than field run (per lot or sample) | 13.75 |
| (iii) Factor analysis (per factor) | 5.65 |
| (2) Additional Tests—Unit Rates (Hops): (i) Lot or sample (per lot or sample) | 29.30 |
| (3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities): | |
| (i) Factor analysis (per factor) | 5.65 |
| (4) Stowage Examination (service-on-request) [4] (i) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (ii) Subsequent ship examinations (same as original) (minimum $151.50 per ship) | |
| (iii) Barge (per examination) | 40.50 |
| (iv) All other carriers (per examination) | 15.50 |

[1] Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage, and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to § 868.92. Explanation of service fees and additional fees, for all other service fees except travel and per diem.
[2] When performed at a location other than the Commodity Testing Laboratory.
[3] Faxed and extra copies of certificates will be charged at $1.50 per copy.
[4] If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

(b) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) listed in table 2 of this section.

(c) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

(d) Laboratory tests referenced in table 2 of this section will be charged at the applicable laboratory fee.

TABLE 2—FEES FOR LABORATORY TEST SERVICES [1]

| Laboratory tests | Fees |
|---|---|
| (1) Aflatoxin (Quantitative—HPLC) | $182.00 |
| (2) Aflatoxin (Quantitative—Test Kit) | 87.00 |
| (3) Aflatoxin (Qualitative—Test Kit) | 47.00 |
| (4) Appearance and odor | 7.00 |
| (5) Ash | 17.00 |
| (6) Brix | 16.00 |
| (7) Calcium | 27.00 |

TABLE 2—FEES FOR LABORATORY TEST SERVICES [1]—Continued

| Laboratory tests | Fees |
|---|---|
| (8) Carotenoid Color | 27.00 |
| (9) Cold test (oil) | 20.00 |
| (10) Color test (syrups) | 13.00 |
| (11) Cooking tests (pasta) | 13.00 |
| (12) Crude fat | 20.00 |
| (13) Crude fiber | 27.00 |
| (14) Falling number | 24.00 |
| (15) Free fatty acid | 24.00 |
| (16) Insoluble impurities (oils and shortenings) | 9.00 |
| (17) Iron enrichment | 30.00 |
| (18) Lovibond color | 20.00 |
| (19) Moisture | 13.00 |
| (20) Moisture and volatile matter | 17.00 |
| (21) Oxidative stability index (OSI) | 54.00 |
| (22) Peroxide Value | 27.00 |
| (23) Popping ratio | 38.00 |
| (24) Protein | 16.00 |
| (25) Sanitation (light filth) | 47.00 |
| (26) Sieve test | 11.00 |
| (27) Smoke Point | 43.00 |
| (28) Solid fat index | 168.00 |
| (29) Visual exam | 22.00 |
| (30) Vomitoxin (Qualitative—Test Kit) | 61.00 |
| (31) Vomitoxin (Quantitative—Test Kit) | 81.00 |
| (32) Other laboratory analytical services (per hour per service representative) | 67.00 |

[1] When laboratory tests/services are provided for GIPSA by a private laboratory, the applicant will be assessed a fee, which, as nearly as practicable, covers the costs to GIPSA for the service provided.

[61 FR 66535, Dec. 18, 1996, as amended 66 FR 17777, Apr. 4, 2001; 69 FR 1894, Jan. 13, 2004]

## § 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services. Fees for other services not referenced in Table 2 will be based on the non-contract hourly rate listed in § 868.91, Table 1.

TABLE 1—HOURLY RATES/UNIT RATE PER CWT

| Service [1] | Regular workday (Monday–Saturday) | Nonregular workday (Sunday–Holiday) |
|---|---|---|
| **Effective February 16, 2007** | | |
| Contract (per hour per Service representative) | $54.80 | $76.00 |
| Noncontract (per hour per Service representative) | 66.80 | 92.10 |
| Export Port Services (per hundredweight) [2] | 0.066 | 0.066 |
| **Effective October 1, 2007** | | |
| Contract (per hour per Service representative) | $56.40 | $78.30 |
| Noncontract (per hour per Service representative) | 68.80 | 94.80 |
| Export Port Services (per hundredweight) [2] | 0.068 | 0.068 |
| **Effective October 1, 2008** | | |
| Contract (per hour per Service representative) | $58.10 | $80.70 |
| Noncontract (per hour per Service representative) | 70.90 | 97.70 |
| Export Port Services (per hundredweight) [2] | 0.070 | 0.070 |
| **Effective October 1, 2009** | | |
| Contract (per hour per Service representative) | $59.90 | $83.10 |
| Noncontract (per hour per Service representative) | 73.00 | 100.60 |
| Export Port Services (per hundredweight) [2] | 0.072 | 0.072 |
| **Effective October 1, 2010** | | |
| Contract (per hour per Service representative) | $61.70 | $85.60 |
| Noncontract (per hour per Service representative) | 75.20 | 103.60 |

TABLE 1—HOURLY RATES/UNIT RATE PER CWT—Continued

| Service [1] | Regular workday (Monday–Saturday) | Nonregular workday (Sunday–Holiday) |
|---|---|---|
| Export Port Services (per hundredweight) [2] | 0.074 | 0.074 |

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.
[2] Services performed at export port locations on lots at rest.

TABLE 2—UNIT RATES SERVICE [1]

| | |
|---|---|
| **Effective February 16, 2007** | |
| Inspection for quality (per lot, sublot, or sample inspection): | |
| (a) Rough rice | $41.90 |
| (b) Brown rice for processing | 36.00 |
| (c) Milled rice | 26.00 |
| Factor analysis for any single factor (per factor): | |
| (a) Milling yield (per sample) (Rough or Brown rice) | 32.50 |
| (b) All other factors (per factor) (all rice) | 15.60 |
| Total oil and free fatty acid | 50.80 |
| Interpretive line samples: [2] | |
| (a) Milling degree (per set) | 111.00 |
| (b) Parboiled light (per sample) | 27.20 |
| Faxed and extra copies of certificates (per copy) | 3.00 |
| Stowage Examination (service-on-request) [3] | |
| (a) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (b) Subsequent ship examination (same as original) (minimum $151.50 per ship) | 50.50 |
| (c) Barge (per examination) | 40.50 |
| (d) All other carriers (per examination) | 15.50 |
| **Effective October 1, 2007** | |
| Inspection for quality (per lot, sublot, or sample inspection): | |
| (a) Rough rice | $43.20 |
| (b) Brown rice for processing | 37.10 |
| (c) Milled rice | 26.80 |
| Factor analysis for any single factor (per factor): | |
| (a) Milling yield (per sample) (Rough or Brown rice) | 33.50 |
| (b) All other factors (per factor) (all rice) | 16.10 |
| Total oil and free fatty acid | 52.30 |
| Interpretive line samples: [2] | |
| (a) Milling degree (per set) | 114.30 |
| (b) Parboiled light (per sample) | 28.00 |
| Faxed and extra copies of certificates (per copy) | 3.00 |
| Stowage Examination (service-on-request) [3] | |
| (a) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (b) Subsequent ship examination (same as original) (minimum $151.50 per ship) | 50.50 |
| (c) Barge (per examination) | 40.50 |
| (d) All other carriers (per examination) | 15.50 |
| **Effective October 1, 2008** | |
| Inspection for quality (per lot, sublot, or sample inspection): | |
| (a) Rough rice | $44.50 |
| (b) Brown rice for processing | 38.20 |
| (c) Milled rice | 27.60 |
| Factor analysis for any single factor (per factor): | |
| (a) Milling yield (per sample) (Rough or Brown rice) | 34.50 |

TABLE 2—UNIT RATES SERVICE [1]—Continued

| | |
|---|---|
| (b) All other factors (per factor) (all rice) | 16.60 |
| Total oil and free fatty acid | 53.90 |
| Interpretive line samples: [2] | |
| (a) Milling degree (per set) | 117.70 |
| (b) Parboiled light (per sample) | 28.80 |
| Faxed and extra copies of certificates (per copy) | 3.00 |
| Stowage Examination (service-on-request) [3] | |
| (a) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (b) Subsequent ship examination (same as original) (minimum $151.50 per ship) | 50.50 |
| (c) Barge (per examination) | 40.50 |
| (d) All other carriers (per examination) | 15.50 |

**Effective October 1, 2009**

| | |
|---|---|
| Inspection for quality (per lot, sublot, or sample inspection): | |
| (a) Rough rice | $45.80 |
| (b) Brown rice for processing | 39.40 |
| (c) Milled rice | 28.40 |
| Factor analysis for any single factor (per factor): | |
| (a) Milling yield (per sample) (Rough or Brown rice) | 35.50 |
| (b) All other factors (per factor) (all rice) | 17.10 |
| Total oil and free fatty acid | 55.50 |
| Interpretive line samples: [2] | |
| (a) Milling degree (per set) | 121.30 |
| (b) Parboiled light (per sample) | 29.70 |
| Faxed and extra copies of certificates (per copy) | 3.00 |
| Stowage Examination (service-on-request) [3] | |
| (a) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (b) Subsequent ship examination (same as original) (minimum $151.50 per ship) | 50.50 |
| (c) Barge (per examination) | 40.50 |
| (d) All other carriers (per examination) | 15.50 |

**Effective October 1, 2010**

| | |
|---|---|
| Inspection for quality (per lot, sublot, or sample inspection): | |
| (a) Rough rice | $47.20 |
| (b) Brown rice for processing | 40.60 |
| (c) Milled rice | 29.30 |
| Factor analysis for any single factor (per factor): | |
| (a) Milling yield (per sample) (Rough or Brown rice) | 36.60 |
| (b) All other factors (per factor) (all rice) | 17.60 |
| Total oil and free fatty acid | 57.20 |
| Interpretive line samples: [2] | |
| (a) Milling degree (per set) | 124.90 |
| (b) Parboiled light (per sample) | 30.60 |
| Faxed and extra copies of certificates (per copy) | 3.00 |
| Stowage Examination (service-on-request) [3] | |
| (a) Ship (per stowage space) (minimum $252.50 per ship) | 50.50 |
| (b) Subsequent ship examination (same as original) (minimum $151.50 per ship) | 50.50 |
| (c) Barge (per examination) | 40.50 |
| (d) All other carriers (per examination) | 15.50 |

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250–3630 or from the GIPSA Web site (*http://www.gipsa.usda.gov*). The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

[72 FR 1915, Jan. 17, 2007]

## § 868.92 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official services in §§ 868.90 and 868.91 include—

(1) The cost of performing the service and related supervision and administrative costs;

(2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, table 1. See § 868.90, table 1, footnote 1, for fees for inspection of commodities other than rice.

(3) The cost of first-class mail service;

(4) The cost of overtime and premium pay; and

(5) The cost of certification except as provided in § 868.92(c).

(b) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for—

(1) Travel from the FGIS field office or assigned duty location to the service point and return; and

(2) The performance of the requested service, less mealtime.

(c) *Additional fees.* Fees in addition to the applicable hourly or unit fee will be assessed when—

(1) An applicant requests more than the original and three copies of a certificate;

(2) An applicant requests onsite typing of certificates or typing of certificates at the FGIS field office during other than normal working hours; and

(3) An applicant requests the use of express-type mail or courier service.

(d) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed when—

(1) Service has been requested at a specified location;

(2) A Service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service; and

(3) FGIS officials determine that the Service representative(s) cannot be utilized elsewhere or cannot be released without cost to the Service.

(e) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point or if the request for service is not withdrawn or dismissed by 2 p.m. of the business day preceding the date of scheduled service. However, hourly fees will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

(f) *To whom fees are assessed.* Fees for official services including additional fees as provided in § 868.92(c) shall be assessed to and paid by the applicant for the Service.

(g) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(h) *Time and form of payment*—(1) *Fees for Federal inspection service.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to U.S. Department of Agriculture, Federal Grain Inspection Service.

(2) *Fees for cooperator inspection service.* Fees for inspection services provided by a cooperator shall be paid by the applicant to the cooperator in accordance with the cooperator's fee schedule.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995; 61 FR 66536, Dec. 18, 1996]

## Subpart B—Marketing Standards

SOURCE: 62 FR 6706, Feb. 13, 1997, unless otherwise noted.

### § 868.101 General information.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA) facilitates the fair and efficient marketing of agricultural products by maintaining voluntary grade standards for Beans, Whole Dry Peas, Split Peas, and Lentils, which provide a uniform language for describing the quality of these commodities in the marketplace. These standards may cover (but are not limited to) terms, classes, quality levels, performance criteria, and inspection requirements. Procedures contained in this part set forth the process which GIPSA will follow in developing, issuing, revising, suspending, or terminating the U.S. standards for Beans, Whole Dry Peas, Split Peas, and Lentils. Communications about GIPSA standards in general should be addressed to the Administrator, GIPSA, USDA, 1400 Independence Avenue, S.W., Washington, D.C. 20250–3601.

### § 868.102 Procedures for establishing and revising grade standards.

(a) GIPSA will develop, revise, suspend, or terminate grade standards if it determines that such action is in the public interest. GIPSA encourages interested parties to participate in the review, development, and revision of grade standards. Interested parties include growers, producers, processors, shippers, distributors, consumers, trade associations, companies, and State or Federal agencies. Such persons may at any time recommend that GIPSA develop, revise, suspend, or terminate a grade standard. Requests for action should be in writing, and should be accompanied by a draft of the suggested change, as appropriate.

(b) GIPSA will:

(1) Determine the need for new or revised standards;

(2) Collect technical, marketing, or other appropriate data;

(3) Conduct research regarding new or revised standards, as appropriate; and

(4) Draft the proposed standards.

(c) If GIPSA determines that new standards are needed, existing standards need to be revised, or the suspension or termination of existing standards is justified, GIPSA will undertake the action with input from interested parties.

### § 868.103 Public notification of grade standards action.

(a) After developing a standardization proposal, GIPSA will publish a notice in the FEDERAL REGISTER proposing new or revised standards or suspending or terminating existing standards. The notice will provide a sufficient comment period for interested parties to submit comments.

(b) GIPSA will simultaneously issue a news release about these actions, notifying the affected industry and general public. GIPSA will also distribute copies of proposals to anyone requesting a copy or to anyone it believes may be interested, including other Federal, State, or local government agencies.

(c) All comments received within the comment period will be made part of the public record maintained by GIPSA, will be available to the public for review, and will be considered by GIPSA before final action is taken on the proposal.

(d) Based on the comments received, GIPSA's knowledge of standards, grading, marketing, and other technical factors, and any other relevant information, GIPSA will decide whether the proposed actions should be implemented.

(e) If GIPSA concludes that the changes as proposed or with appropriate modifications should be adopted, GIPSA will publish the final changes in the FEDERAL REGISTER as a final notice. GIPSA will make the grade standards and related information available in printed form and electronic media.

(f) If GIPSA determines that proposed changes are not warranted, or otherwise are not in the public interest, GIPSA will either publish in the FEDERAL REGISTER a notice withdrawing the proposal, or will revise the proposal and again seek public input.

## Subpart C—United States Standards for Rough Rice

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted.

TERMS DEFINED

### § 868.201 Definition of rough rice.

Rice (*Oryza sativa* L.) which consists of 50 percent or more of paddy kernels (see § 868.202(i)) of rice.

[34 FR 7863, May 17, 1969. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.202 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Chalky kernels.* Whole or large broken kernels of rice which are one-half or more chalky.

(c) *Classes.* The following four classes:

Long Grain Rough Rice
Medium Grain Rough Rice
Short Grain Rough Rice
Mixed Rough Rice

Classes shall be based on the percentage of whole kernels, large broken kernels, and types of rice.

(1) ''Long grain rough rice'' shall consist of rough rice which contains more than 25 percent of whole kernels and which after milling to a well-milled degree, contains not more than 10 percent of whole or broken kernels of medium or short grain rice.

(2) ''Medium grain rough rice'' shall consist of rough rice which contains more than 25 percent of whole kernels and which after milling to a well-milled degree, contains not more than 10 percent of whole or large broken kernels of long grain rice or whole kernels of short grain rice.

(3) ''Short grain rough rice'' shall consist of rough rice which contains more than 25 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10 percent of whole or large broken kernels of long grain rice or whole kernels of medium grain rice.

(4) ''Mixed rough rice'' shall consist of rough rice which contains more than 25 percent of whole kernels and which, after milling to a well-milled degree, contains more than 10 percent of ''other types'' as defined in paragraph (h) of this section.

(d) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and whole or large broken kernels of parboiled rice in non-parboiled rice. ''Heat-damaged kernels'' (see paragraph (e) of this section) shall not function as damaged kernels.

(e) *Heat-damaged kernels.* Whole or large broken kernels of rice which are materially discolored and damaged as a result of heating, and whole or large broken kernels of parboiled rice in non-parboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(f) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that are produced in the milling of rough rice to a well-milled degree.

(g) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(h) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice, (ii) medium grain rice in long or short grain rice, (iii) short grain rice in long or medium grain rice, and (2) Large broken kernels of long grain rice in medium or short grain rice and large broken kernels of medium or short grain rice in long grain rice.

NOTE: Broken kernels of medium grain rice in short grain rice and large broken kernels of short grain rice in medium grain rice shall not be considered other types.

(i) *Paddy kernels.* Whole or broken unhulled kernels of rice.

(j) *Red rice.* Whole or large broken kernels of rice on which there is an appreciable amount of red bran.

(k) *Seeds.* Whole or broken seeds of any plant other than rice.

(l) *Smutty kernels.* Whole or broken kernels of rice which are distinctly infected by smut.

(m) *Types of rice.* The following three types:

Long grain
Medium grain
Short grain

Types shall be based on the length-width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as prescribed in FGIS instructions.

(n) *Ungelatinized kernels.* Whole or large broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(o) *Whole and large broken kernels.* Rice (including seeds) that (1) passes over a 6 plate (for southern production), or (2) remains on top of a 6 sieve (for western production).

(p) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(q) *6 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter.

(r) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, and a bottom lamina 0.091-inch thick, without perforations.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

## PRINCIPLES GOVERNING APPLICATION OF STANDARDS

### § 868.203 Basis of determination.

The determination of seeds, objectionable seeds, heat-damaged kernels, red rice and damaged kernels, chalky kernels, other types, color, and the special grade Parboiled rough rice shall be on the basis of the whole and large broken kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. When determining class, the percentage of (a) whole kernels of rough rice shall be determined on the basis of the original sample, and (b) types of rice shall be determined on the basis of the whole and large broken kernels of milled rice that are produced in the milling of rough rice to a well-milled degree. Smutty kernels shall be determined on the basis of the rough rice after it has been cleaned and shelled as prescribed in FGIS instructions, or by any method that is approved by the Administrator as giving equivalent results. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking as prescribed in FGIS instructions, or by any method that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.204 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual examinations shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21403, May 18, 1989, and 60 FR 16364, Mar. 30, 1995]

### § 868.205 Milling requirements.

In determining milling yield (see § 868.202(f)) in rough rice, the degree of milling shall be equal to, or better than, that of the interpretive line sample for ''well-milled'' rice.

[42 FR 40869, Aug. 12, 1977. Redesignated at 54 FR 21413, May 18, 1989. Further redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.206 Milling yield determination.

Milling yield shall be determined by the use of an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, ''approved device'' shall include the McGill Miller No. 3 and any other equipment that is approved by the Administrator as giving equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the rough rice exceeds 18.0 percent.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; Redesignated and amended at 54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.207 Moisture.

Water content in rough rice as determined by an approved device in accordance with procedures prescribed in the FGIS instructions. For the purpose of this paragraph, ''approved device'' shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21403, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.208 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

[54 FR 21403, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.209 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

[54 FR 21404, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

### § 868.210 Grades and grade requirements for the classes of Rough Rice. (See also § 868.212.)

| Grade | Maximum limits of— | | | | | | | Color requirements [1] (minimum) |
|---|---|---|---|---|---|---|---|---|
| | Seeds and heat-damaged kernels | | | Red rice and damaged kernels (singly or combined) (Percent) | Chalky kernels [1,2] | | Other types [3] (Percent) | |
| | Total (singly or combined) (Number in 500 grams) | Heat-damaged kernels and objectionable seeds (singly or combined) (Number in 500 grams) | Heat-damaged kernels (Number in 500 grams) | | In long grain rice (Percent) | In medium or short grain rice (Percent) | | |
| U.S. No. 1 | 4 | 3 | 1 | 0.5 | 1.0 | 2.0 | 1.0 | Shall be white or creamy. |
| U.S. No. 2 | 7 | 5 | 2 | 1.5 | 2.0 | 4.0 | 2.0 | May be slightly gray. |
| U.S. No. 3 | 10 | 8 | 5 | 2.5 | 4.0 | 6.0 | 3.0 | May be light gray. |
| U.S. No. 4 | 27 | 22 | 15 | 4.0 | 6.0 | 8.0 | 5.0 | May be gray or slight rosy. |
| U.S. No. 5 | 37 | 32 | 25 | 6.0 | 10.0 | 10.0 | 10.0 | May be dark gray or rosy. |

| Grade | Maximum limits of— | | | | | | | Color requirements [1] (minimum) |
|---|---|---|---|---|---|---|---|---|
| | Seeds and heat-damaged kernels | | | Red rice and damaged kernels (singly or combined) (Percent) | Chalky kernels [1,2] | | Other types [3] (Percent) | |
| | Total (singly or combined) (Number in 500 grams) | Heat-damaged kernels and objectionable seeds (singly or combined) (Number in 500 grams) | Heat-damaged kernels (Number in 500 grams) | | In long grain rice (Percent) | In medium or short grain rice (Percent) | | |
| U.S. No. 6 | 75 | 75 | 75 | [4] 15.0 | 15.0 | 15.0 | 10.0 | May be dark gray or rosy. |
| U.S. Sample grade | | | | | | | | |

U.S. Sample grade shall be rough rice which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 14.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; or (e) is otherwise of distinctly low quality.

[1] For the special grade Parboiled rough rice, see § 868.212(b).
[2] For the special grade Glutinous rough rice, see § 868.212(d).
[3] These limits do not apply to the class Mixed Rough Rice.
[4] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

[56 FR 55978, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.211 Grade designation.

(a) The grade designation for all classes of rough rice, except Mixed Rough Rice, shall include in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade,'' as warranted; (3) the words ''or better'' when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see § 868.213); and (6) a statement of the milling yield.

(b) The grade designation for the class Mixed Rough Rice shall include, in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade,'' as warranted; (3) the words ''or better,'' when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see § 868.213); (6) the percentage of whole kernels of each type in the order of predominance; (7) the percentage of large broken kernels of each type in the order of predominance; (8) the percent of material removed by the No. 6 sieve or the No. 6 sizing plate; (9) when applicable, the percentage of seeds; and (10) a statement of the milling yield.

NOTE: Large broken kernels other than long grain, in Mixed Rough Rice, shall be certificated as ''medium or short grain.''

[42 FR 40869, Aug. 12, 1977, as amended at 54 FR 51344, Dec. 14, 1989. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

## SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

### § 868.212 Special grades and requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 868.210. Such special grades for rough rice are established and determined as follows:

(a) *Infested rough rice.* Tolerances for live insects for infested rough rice are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. The rough rice (except when examined according to paragraph (a)(3) of this section will be considered infested if the representative sample contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice or five or more other live insects injurious to stored rice.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot.

(3) *Sample as a whole during continuous loading/unloading.* The minimum sample size for rice being sampled during continuous loading/unloading is 500 grams per each 100,000 pounds of rice. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

(b) *Parboiled rough rice.* Parboiled rough rice shall be rough rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6 inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered ''Parboiled Light''; (2) distinctly but not materially colored by the parboiling process, it shall be considered ''Parboiled''; (3) materially colored by the parboiling process, it shall be considered ''Parboiled Dark.'' The color levels for ''Parboiled Light,'' ''Parboiled,'' and ''Parboiled Dark'' rice shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for ''Chalky kernels,'' ''Heat-damaged kernels,'' ''Kernels damaged by heat,'' and the ''Color requirements'' shown in § 868.210 are not applicable to the special grade ''Parboiled rough rice.''

(c) *Smutty rough rice.* Smutty rough rice shall be rough rice which contains more than 3.0 percent of smutty kernels.

(d) *Glutinous rough rice.* Glutinous rough rice shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels.

NOTE: The maximum limits for ''Chalky kernels'' in § 868.210 are not applicable to the special grade ''Glutinous rough rice.''

(e) *Aromatic rough rice.* Aromatic rough rice shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

[42 FR 40869, Aug. 12, 1977, as amended at 54 FR 21406, May 18, 1989; 56 FR 55978, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.213 Special grade designation.

The grade designation for infested, parboiled, smutty, glutinous, or aromatic rough rice shall include, following the class, the word(s) ''Infested,'' ''Parboiled Light,'' ''Parboiled,'' ''Parboiled Dark,'' ''Smutty,'' ''Glutinous,'' or ''Aromatic,'' as warranted, and all other information prescribed in § 868.211.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

## Subpart D—United States Standards for Brown Rice for Processing

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

TERMS DEFINED

### § 868.251 Definition of brown rice for processing.

Rice (*Oryza sativa* L.) which consists of more than 50.0 percent of kernels of

brown rice, and which is intended for processing to milled rice.

### § 868.252 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(d) *Classes.* There are four classes of brown rice for processing.

Long Grain Brown Rice for Processing.
Medium Grain Brown Rice for Processing.
Short Grain Brown Rice for Processing.
Mixed Brown Rice for Processing.

Classes shall be based on the percentage of whole kernels, broken kernels, and types of rice.

(1) ''Long-grain brown rice for processing'' shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of medium- or short-grain rice.

(2) ''Medium-grain brown rice for processing'' shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of short-grain rice.

(3) ''Short-grain brown rice for processing'' shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long-grain rice or whole kernels of medium-grain rice.

(4) ''Mixed brown rice for processing'' shall be brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and more than 10.0 percent of ''other types'' as defined in paragraph (i) of this section.

(e) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means (including parboiled kernels in nonparboiled rice and smutty kernels). ''Heat-damaged kernels'' (see paragraph (f) of this section) shall not function as damaged kernels.

(f) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(g) *Milling yield.* An estimate of the quantity of whole kernels and total milled rice (whole and broken kernels combined) that is produced in the milling of brown rice for processing to a well-milled degree.

(h) *Objectionable seeds.* Whole or broken seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(i) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice and medium or short grain rice in long grain rice, (ii) medium grain rice in long or short grain rice, (iii) short grain rice in long or medium grain rice, (2) broken kernels of long grain rice in medium or short grain rice and broken kernels of medium or short grain rice in long grain rice.

NOTE: Broken kernels of medium grain rice in short grain rice and broken kernels of short grain rice in medium grain rice shall not be considered other types.

(j) *Paddy Kernels.* Whole or broken unhulled kernels and whole or broken kernels of rise having a portion or portions of the hull remaining which cover one-half (½) or more of the whole or broken kernel.

(k) *Red rice.* Whole or broken kernels of rice on which the bran is distinctly red in color.

(l) *Related material.* All by-products of a paddy kernel, such as the outer glumes, lemma, palea, awn, embryo, and bran layers.

(m) *Seeds.* Whole or broken seeds of any plant other than rice.

(n) *Smutty kernels.* Whole or broken kernels of rice which are distinctly infected by smut.

(o) *Types of rice.* There are three types of brown rice for processing:

Long grain
Medium grain
Short grain

Types shall be based on the length/width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels of rice that are broken as prescribed in FGIS instructions.

(p) *Ungelantinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatization of the starch.

(q) *Unrelated material.* All matter other than rice, related material, and seeds.

(r) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the embryos and the bran layers have been removed.

(s) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(t) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, and a bottom lamina 0.091-inch thick, without perforations.

(u) *6½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter.

[13 FR 9479, Dec. 31, 1948, as amended at 44 FR 73008, Dec. 17, 1979; 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989; 54 FR 51344, Dec. 14, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

### § 868.253 Basis of determination.

The determination of kernels damaged by heat, heat-damaged kernels, parboiled kernels in nonparboiled rice, and the special grade Parboiled brown rice for processing shall be on the basis of the brown rice for processing after it has been milled to a well-milled degree. All other determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking as prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.254 Broken kernels determination.

Broken kernels shall be determined by the use of equipment and procedures prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.255 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.256 Milling requirements.

In determining milling yield (see § 868.252(g)) in brown rice for processing, the degree of milling shall be equal to, or better than, that of the interpretive line sample for ''well-milled'' rice.

[42 FR 40869, Aug. 12, 1977. Redesignated at 21406, May 18, 1989. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.257 Milling yield determination.

Milling yield shall be determined by the use of an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, ''approved device'' shall include the McGill Miller No. 3 and any other equipment that is approved by the Administrator as giving equivalent results.

NOTE: Milling yield shall not be determined when the moisture content of the brown rice for processing exceeds 18.0 percent.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Further redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.258 Moisture.

Water content in brown rice for processing as determined by an approved device in accordance with procedures prescribed in FGIS instructions. For the purpose of this paragraph, ''approved device'' shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989. Further redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.259 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest whole percent. Milling yield is stated to the nearest whole percent.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.260 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

## GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

### § 868.261 Grade and grade requirements for the classes of brown rice for processing. (See also § 868.263.)

| Grade | Maximum limits of— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Paddy kernels | | Seeds and heat-damaged kernels | | | Red rice and damaged kernels (singly or combined) (percent) | Chalky kernels [1,2] (percent) | Broken kernels removed by a 6 plate or a 6½ sieve [3] (percent) | Other types [4] | Wellmilled kernels (percent) |
| | Percent | Number in 500 grams | Total (singly or combined) (number in 500 grams) | Heat-damaged kernels (number in 500 grams) | Objectionable seeds (number in 500 grams) | | | | | |
| U.S. No. 1 ..... | — | 20 | 10 | 1 | 2 | 1.0 | 2.0 | 1.0 | 1.0 | 1.0 |
| U.S. No. 2 ..... | 2.0 | — | 40 | 2 | 10 | 2.0 | 4.0 | 2.0 | 2.0 | 3.0 |
| U.S. No. 3 ..... | 2.0 | — | 70 | 4 | 20 | 4.0 | 6.0 | 3.0 | 5.0 | 10.0 |
| U.S. No. 4 ..... | 2.0 | — | 100 | 8 | 35 | 8.0 | 8.0 | 4.0 | 10.0 | 10.0 |
| U.S. No. 5 ..... | 2.0 | — | 150 | 15 | 50 | 15.0 | 15.0 | 6.0 | 10.0 | 10.0 |
| U.S. Sample grade | U.S. Sample grade shall be brown rice for processing which (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 14.5 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.2 percent of related material or more than 0.1 percent of unrelated material; (f) contains two or more live weevils or other live insects; or (g) is otherwise of distinctly low quality. | | | | | | | | | |

[1] For the special grade Parboiled brown rice for processing, see § 868.263(a).
[2] For the special grade Glutinous brown rice for processing, see § 868.263(c).
[3] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Brown Rice for Processing.

[56 FR 55979, Oct. 31, 1991. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

### § 868.262 Grade designation.

(a) The grade designation for all classes of brown rice for processing, except Mixed Brown Rice for Processing, shall include in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade,'' as warranted; (3) the words ''or better,'' when applicable and requested by the applicant prior to inspection; (4) the class; and (5) each applicable special grade (see § 868.264).

(b) The grade designation for the class Mixed Brown Rice for Processing shall include in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade,'' as warranted; (3) the words ''or better,'' when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see § 868.264); (6) the percentage of whole kernels of each type in the order of predominance; and when applicable; (7) the percentage of broken kernels of each type in the order of predominance; and (8) the percentage of seeds, related material, and unrelated material.

NOTE: Broken kernels other than long grain, in Mixed Brown Rice for Processing, shall be certificated as ''medium or short grain.''

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

### § 868.263 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 868.262. Such special grades for brown rice for processing are established and determined as follows:

(a) *Parboiled brown rice for processing.* Parboiled brown rice for processing shall be rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. Nos. 1 to 5, inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grade U.S. No. 5 not more than 0.5 percent of nonparboiled rice.

NOTE: The maximum limits for ''chalky kernels,'' ''Heat-damaged kernels,'' and ''Kernels damaged by heat'' shown in § 868.261 are not applicable to the special grade ''Parboiled brown rice for processing.''

(b) *Smutty brown rice for processing.* Smutty brown rice for processing shall be rice which contains more than 3.0 percent of smutty kernels.

(c) *Glutinous brown rice for processing.* Glutinous brown rice for processing shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels.

NOTE: The maximum limits for ''Chalky kernels'' in § 868.261 are not applicable to the special grade ''Glutinous brown rice for processing.''

(d) *Aromatic brown rice for processing.* Aromatic brown rice for processing shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 56 FR 55979, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]

### § 868.264 Special grade designation.

The grade designation for parboiled, smutty, glutinous, or aromatic brown rice for processing shall include, following the class, the word(s) ''Parboiled,'' ''Smutty,'' ''Glutinous,'' or ''Aromatic,'' as warranted, and all other information prescribed in § 868.262.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

## Subpart E—United States Standards for Milled Rice

NOTE TO THE SUBPART: Compliance with the provisions of these standards does not excuse failure to comply with the provisions

of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

SOURCE: 42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, unless otherwise noted. Redesignated at 60 FR 16364, Mar. 30, 1995.

TERMS DEFINED

### § 868.301 Definition of milled rice.

Whole or broken kernels of rice (*Oryza sativa* L.) from which the hulls and at least the outer bran layers have been removed and which contain not more than 10.0 percent of seeds, paddy kernels, or foreign material, either singly or combined.

[48 FR 24859, June 3, 1983. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.302 Definition of other terms.

For the purposes of these standards, the following terms shall have the meanings stated below:

(a) *Broken kernels.* Kernels of rice which are less than three-fourths of whole kernels.

(b) *Brown rice.* Whole or broken kernels of rice from which the hulls have been removed.

(c) *Chalky kernels.* Whole or broken kernels of rice which are one-half or more chalky.

(d) *Classes.* There are seven classes of milled rice. The following four classes shall be based on the percentage of whole kernels, and types of rice:

Long Grain Milled Rice.
Medium Grain Milled Rice.
Short Grain Milled Rice.
Mixed Milled Rice.

The following three classes shall be based on the percentage of whole kernels and of broken kernels of different size:

Second Head Milled Rice.
Screenings Milled Rice.
Brewers Milled Rice.

(1) ''Long grain milled rice'' shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of medium or short grain rice. U.S. No. 5 and U.S. No. 6 long grain milled rice shall contain not more than 10.0 percent of whole kernels of medium or short grain milled rice (broken kernels do not apply).

(2) ''Medium grain milled rice'' shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of short grain rice. U.S. No. 5 and U.S. No. 6 medium grain milled rice shall contain not more than 10.0 percent of whole kernels of long or short grain milled rice (broken kernels do not apply).

(3) ''Short grain milled rice'' shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. Nos. 1 through 4 not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of medium grain rice. U.S. No. 5 and U.S. No. 6 short grain milled rice shall contain not more than 10.0 percent of whole kernels of long or medium grain milled rice (broken kernels do not apply).

(4) ''Mixed milled rice'' shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and more than 10.0 percent of ''other types'' as defined in paragraph (i) of this section. U.S. No. 5 and U.S. No. 6 mixed milled rice shall contain more than 10.0 percent of whole kernels of ''other types'' (broken kernels do not apply).

(5) ''Second head milled rice'' shall consist of milled rice which, when determined in accordance with § 868.303, contains:

(i) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 7.0 percent of broken kernels removed by a 6 plate, (*c*) 0.4 percent of broken kernels removed by a 5 plate, and (*d*) 0.05 percent of broken kernels passing through a 4 sieve (southern production); or

(ii) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 50.0 percent of broken kernels passing through a 6½ sieve, and (*c*) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(6) ''Screenings milled rice'' shall consist of milled rice which, when determined in accordance with § 868.303, contains:

(i) Not more than (*a*) 25.0 percent of whole kernels, (*b*) 10.0 percent of broken kernels removed by a 5 plate, and

(*c*) 0.2 percent of broken kernels passing through a 4 sieve (southern production); or

(ii) Not more than (*a*) 25.0 percent of whole kernels and (*b*) 15.0 percent of broken kernels passing through a 5½ sieve; and more than (*c*) 50.0 percent of broken kernels passing through a 6½ sieve and (*d*) 10.0 percent of broken kernels passing through a 6 sieve (western production).

(7) ''Brewers milled rice'' shall consist of milled rice which, when determined in accordance with § 868.303, contains not more than 25.0 percent of whole kernels and which does not meet the kernel-size requirements for the class Second Head Milled Rice or Screenings Milled Rice.

(e) *Damaged kernels.* Whole or broken kernels of rice which are distinctly discolored or damaged by water, insects, heat, or any other means, and parboiled kernels in nonparboiled rice. ''Heat-damaged kernels'' (see paragraph (g) of this section) shall not function as damaged kernels.

(f) *Foreign material.* All matter other than rice and seeds. Hulls, germs, and bran which have separated from the kernels of rice shall be considered foreign material.

(g) *Heat-damaged kernels.* Whole or broken kernels of rice which are materially discolored and damaged as a result of heating and parboiled kernels in nonparboiled rice which are as dark as, or darker in color than, the interpretive line for heat-damaged kernels.

(h) *Objectionable seeds.* Seeds other than rice, except seeds of *Echinochloa crusgalli* (commonly known as barnyard grass, watergrass, and Japanese millet).

(i) *Other types.* (1) Whole kernels of: (i) Long grain rice in medium or short grain rice, (ii) medium grain rice in long or short grain rice, (iii) Short grain rice in long or medium grain rice, and (2) broken kernels of long grain rice in medium or short grain rice and broken kernels of medium or short grain rice in long grain rice, except in U.S. No. 5 and U.S. No. 6 milled rice. In U.S. No. 5 and U.S. No. 6 milled rice, only whole kernels will apply.

NOTE: Broken kernels of medium grain rice in short grain rice and broken kernels of short grain rice in medium grain rice shall not be considered other types.

(j) *Paddy Kernels.* Whole or broken unhulled kernels of rice; whole or broken kernels of brown rice, and whole or broken kernels of milled rice having a portion or portions of the hull remaining which cover one-eighth (⅛) or more of the whole or broken kernel.

(k) *Red rice.* Whole or broken kernels of rice on which there is an appreciable amount of red bran.

(l) *Seeds.* Whole or broken seeds of any plant other than rice.

(m) *Types of rice.* There are three types of milled rice as follows:

Long grain.
Medium grain.
Short grain.

Types shall be based on the length-width ratio of kernels of rice that are unbroken and the width, thickness, and shape of kernels that are broken, prescribed in FGIS instructions.

(n) *Ungelatinized kernels.* Whole or broken kernels of parboiled rice with distinct white or chalky areas due to incomplete gelatinization of the starch.

(o) *Well-milled kernels.* Whole or broken kernels of rice from which the hulls and practically all of the germs and the bran layers have been removed.

NOTE: This factor is determined on an individual kernel basis and applies to the special grade Undermilled milled rice only.

(p) *Whole kernels.* Unbroken kernels of rice and broken kernels of rice which are at least three-fourths of an unbroken kernel.

(q) *5 plate.* A laminated metal plate 0.142–inch thick, with a top lamina, 0.051–inch thick, perforated with rows of round holes 0.0781 (5/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091-inch thick, without perforations.

(r) *6 plate.* A laminated metal plate 0.142-inch thick, with a top lamina 0.051-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows, and a bottom lamina 0.091–inch thick, without perforations.

(s) *2½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0391 (2½/64) inch in diameter, 0.075-inch from center to center, with

each row staggered in relation to the adjacent rows.

(t) *4 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0625 (4/64) inch in diameter, 1/8 inch from center to center, with each row staggered in relation to the adjacent rows.

(u) *5 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0781 (5/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(v) *5½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0859 (5½/64) inch in diameter, 9/64 inch from center to center, with each row staggered in relation to the adjacent rows.

(w) *6 sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.0938 (6/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(x) *6½ sieve.* A metal sieve 0.032-inch thick, perforated with rows of round holes 0.1016 (6½/64) inch in diameter, 5/32 inch from center to center, with each row staggered in relation to the adjacent rows.

(y) *30 sieve.* A woven wire cloth sieve having 0.0234-inch openings, with a wire diameter of 0.0153 inch, and meeting the specifications of American Society for Testing and Materials Designation E–11–61, prescribed in FGIS instructions.

[13 FR 9479, Dec. 31, 1948, as amended at 44 FR 73008, Dec. 17, 1979; 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989; 54 FR 51345, Dec. 14, 1989. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

### § 868.303 Basis of determination.

All determinations shall be on the basis of the original sample. Mechanical sizing of kernels shall be adjusted by handpicking, as prescribed in FGIS instructions, or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.304 Broken kernels determination.

Broken kernels shall be determined by the use of equipment and procedures prescribed in FGIS instructions or by any method which gives equivalent results.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982; 54 FR 21403, May 18, 1989. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

### § 868.305 Interpretive line samples.

Interpretive line samples showing the official scoring line for factors that are determined by visual observation shall be maintained by the Federal Grain Inspection Service, U.S. Department of Agriculture, and shall be available for reference in all inspection offices that inspect and grade rice.

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 47 FR 34516, Aug. 10, 1982. Redesignated at 54 FR 21406, May 18, 1989 and 60 FR 16364, Mar. 30, 1995]

### § 868.306 Milling requirements.

The degree of milling for milled rice; *i.e.,* ''hard milled,'' ''well-milled,'' and ''reasonably well-milled,'' shall be equal to, or better than, that of the interpretive line samples for such rice.

[67 FR 61250, Sept. 30, 2002]

### § 868.307 Moisture.

Water content in milled rice as determined by an FGIS approved device in accordance with procedures prescribed in FGIS instructions.

[67 FR 61250, Sept. 30, 2002]

### § 868.308 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* The percentage of broken kernels removed by a 5 plate in

U.S. Nos. 1 and 2 Milled Rice and the percentage of objectionable seeds in U.S. No. 1 Brewers Milled Rice is reported to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

[54 FR 21406, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.309 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

[54 FR 21407, May 18, 1989. Redesignated at 60 FR 16364, Mar. 30, 1995]

### § 868.310 Grades and grade requirements for the classes Long Grain Milled Rice, Medium Grain Milled Rice, Short Grain Milled Rice, and Mixed Milled Rice. (See also § 868.315.)

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

| Grade | Maximum limits of— | | | | | | | | | | | Color requirements [1] | Minimum milling requirements [5] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Seeds, heat damaged, and paddy kernels (singly or combined) | | Red rice and damaged kernels (singly or combined) (percent) | Chalky kernels [1,2] | | Broken kernels | | | | Other types [4] | | | |
| | Total (number in 500 grams) | Heat damaged kernels and objectionable seeds (number in 500 grams) | | In long grain rice (percent) | In medium or short grain rice (percent) | Total (percent) | Removed by a 5 plate [3] (percent) | Removed by a 6 plate [3] (percent) | Through a 6 sieve [3] (percent) | Whole kernels (percent) | Whole and broken kernels (percent) | | |
| U.S. No. 1 | 2 | 1 | 0.5 | 1.0 | 2.0 | 4.0 | 0.04 | 0.1 | 0.1 | ..... | 1.0 | White or creamy. | Well Milled. |
| U.S. No. 2 | 4 | 2 | 1.5 | 2.0 | 4.0 | 7.0 | 0.06 | 0.2 | 0.2 | ..... | 2.0 | Slightly gray ... | Well Milled. |
| U.S. No. 3 | 7 | 5 | 2.5 | 4.0 | 6.0 | 15.0 | 0.1 | 0.8 | 0.5 | ..... | 3.0 | Light gray ..... | Reasonably well milled. |
| U.S. No. 4 | 20 | 15 | 4.0 | 6.0 | 8.0 | 25.0 | 0.4 | 1.0 | 0.7 | ..... | 5.0 | Gray or slightly rosy. | Reasonably well milled. |
| U.S. No. 5 | 30 | 25 | [5] 6.0 | 10.0 | 10.0 | 35.0 | 0.7 | 3.0 | 1.0 | 10.0 | ..... | Dark gray or rosy. | Reasonably well milled. |
| U.S. No. 6 | 75 | 75 | [6] 15.0 | 15.0 | 15.0 | 50.0 | 1.0 | 4.0 | 2.0 | 10.0 | ..... | Dark gray or rosy. | Reasonably well milled. |

U.S. Sample grade:

U.S. Sample grade shall be milled rice of any of these classes which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) Contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; (g) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 868.315(c).
[2] For the special grade Glutinous milled rice, see § 868.315(e).
[3] Plates should be used for southern production rice; and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Milled Rice.
[5] For the special grade Undermilled milled rice, see § 868.315(d).
[6] Grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

[67 FR 61250, Sept. 30, 2002, as amended at 70 FR 37255, June 29, 2005]

**§ 868.311 Grades and grade requirements for the class Second Head Milled Rice. (See also § 868.315.)**

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

| Grade | Maximum limits of— | | | | | |
|---|---|---|---|---|---|---|
| | Seeds, heat-damaged, and paddy kernels (singly or combined) | | Red rice and damaged kernels (singly or combined) (percent) | Chalky kernels [1,3] (percent) | Color requirements [1] | Minimum milling requirements [2] |
| | Total (number in 500 grams) | Heat-damaged kernels and objectionable seeds (number in 500 grams) | | | | |
| U.S. No. 1 | 15 | 5 | 1.0 | 4.0 | White or Creamy | Well milled. |
| U.S. No. 2 | 20 | 10 | 2.0 | 6.0 | Slightly gray | Well milled. |
| U.S. No. 3 | 35 | 15 | 3.0 | 10.0 | Light gray | Reasonably well milled. |
| U.S. No. 4 | 50 | 25 | 5.0 | 15.0 | Gray or slightly gray | Reasonably well milled. |
| U.S. No. 5 | 75 | 40 | 10.0 | 20.0 | Dark gray or rosy | Reasonably well milled. |

U.S. Sample grade:

U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 868.315(c).
[2] For the special grade Undermilled milled rice, see § 868.315(d).
[3] For the special grade Glutinous milled rice, see § 868.315(e).

[67 FR 61251, Sept. 30, 2002]

### § 868.312 Grade and grade requirements for the class Screenings Milled Rice. (See also § 868.315.)

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

| Grade | Maximum limits of— | | | | |
|---|---|---|---|---|---|
| | Paddy kernels and seeds | | Chalky kernels [1,3] (percent) | Color requirements [1] | Minimum milling requirements [2] |
| | Total (number in 500 grams) | Objectionable seeds (number in 500 grams) | | | |
| U.S. No. 1 [4,5] | 30 | 20 | 5.0 | White or Creamy | Well milled. |
| U.S. No. 2 [4,5] | 75 | 50 | 8.0 | Slightly gray | Well milled. |
| U.S. No. 3 [4,5] | 125 | 90 | 12.0 | Light gray or slightly rosy | Reasonably well milled. |
| U.S. No. 4 [4,5] | 175 | 140 | 20.0 | Gray or rosy | Reasonably well milled. |
| U.S. No. 5 | 250 | 200 | 30.0 | Dark gray or very rosy | Reasonably well milled. |

U.S. Sample grade:

U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance (f) contains more than 0.1 percent of foreign material; (g) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (h) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 868.315(c).
[2] For the special grade Undermilled milled rice, see § 868.315(d).
[3] For the special grade Glutinous milled rice, see § 868.315(e).
[4] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[5] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve.

[67 FR 61251, Sept. 30, 2002]

### § 868.313 Grades and grade requirements for the class Brewers Milled Rice. (See also § 868.315.)

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

| Grade | Maximum limits of— paddy kernels and seeds | | Color requirements [1] | Minimum milling requirements [2] |
|---|---|---|---|---|
| | Total (singly or combined) (percent) | Objectionable seeds (percent) | | |
| U.S. No. 1 [3,4] | 0.5 | 0.05 | White or Creamy | Well milled. |
| U.S. No. 2 [3,4] | 1.0 | 0.1 | Slightly gray | Well milled. |
| U.S. No. 3 [3,4] | 1.5 | 0.2 | Light gray or slightly rosy | Reasonably well milled. |
| U.S. No. 4 [3,4] | 3.0 | 0.4 | Gray or rosy | Reasonably well milled. |
| U.S. No. 5 | 5.0 | 1.5 | Dark gray or very rosy | Reasonably well milled. |

U.S. Sample grade:

U.S. Sample grade shall be milled rice of this class which: (a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance; (f) contains more than 0.1 percent of foreign material; (g) contains more than 15.0 percent of broken kernels that will pass through a 2½ sieve; (h) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (h) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 868.315(c).
[2] For the special grade Undermilled milled rice, see § 868.315(d).
[3] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[4] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve. This limit does not apply to the special grade Granulated brewers milled rice.

[67 FR 61252, Sept. 30, 2002]

### § 868.314 Grade designations.

(a) The grade designation for all classes of milled rice, except Mixed Milled Rice, shall include in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade'', as warranted; (3) the words ''or better,'' when applicable and

requested by the applicant prior to inspections; (4) the class; and (5) each applicable special grade (see § 868.316).

(b) The grade designation for the class Mixed Milled Rice shall include, in the following order: (1) The letters ''U.S.''; (2) the number of the grade or the words ''Sample grade'', as warranted; (3) the words ''or better,'' when applicable and requested by the applicant prior to inspection; (4) the class; (5) each applicable special grade (see § 868.316); (6) the percentage of whole kernels of each type in the order of predominance and when applicable; (7) the percentage of broken kernels of each type in the order of predominance; and (8) the percentage of seeds and foreign material.

NOTE: Broken kernels other than long grain, in Mixed Milled Rice, shall be certificated as ''medium or short grain.''

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

### § 868.315 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 868.314. Such special grades for milled rice are established and determined as follows:

(a) *Coated Milled Rice.* Coated milled rice shall be rice which is coated, in whole or in part, with substances that are safe and suitable as defined in the regulation issued pursuant to the Federal Food, Drug, and Cosmetic Act at 21 CFR 130.3(d).

(b) *Granulated brewers milled rice.* Granulated brewers milled rice shall be milled rice which has been crushed or granulated so that 95.0 percent or more will pass through a 5 sieve, 70.0 percent or more will pass through a 4 sieve, and not more than 15.0 percent will pass through a 2½ sieve.

(c) *Parboiled milled rice.* Parboiled milled rice shall be milled rice in which the starch has been gelatinized by soaking, steaming, and drying. Grades U.S. No. 1 to U.S. No. 6, inclusive, shall contain not more than 10.0 percent of ungelatinized kernels. Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 0.1 percent, grades U.S. No. 3 and U.S. No. 4 not more than 0.2 percent, and grades U.S. No. 5 and U.S. No. 6 not more than 0.5 percent of nonparboiled rice. If the rice is: (1) Not distinctly colored by the parboiling process, it shall be considered ''Parboiled Light''; (2) distinctly but not materially colored by the parboiling process, it shall be considered ''Parboiled''; (3) materially colored by the parboiling process, it shall be considered ''Parboiled Dark.'' The color levels for ''Parboiled Light,'' ''Parboiled,'' and ''Parboiled Dark'' shall be in accordance with the interpretive line samples for parboiled rice.

NOTE: The maximum limits for ''Chalky kernels,'' ''Heat-damaged kernels,'' ''Kernels damaged by heat,'' and the ''Color requirements'' in §§ 868.310, 868.311, 868.312, and 868.313 are not applicable to the special grade ''Parboiled milled rice.''

(d) *Undermilled milled rice.* Undermilled milled rice shall be milled rice which is not equal to the milling requirements for ''hard milled,'' ''well milled,'' and ''reasonably well milled'' rice (see § 868.306). Grades U.S. No. 1 and U.S. No. 2 shall contain not more than 2.0 percent, grades U.S. No. 3 and U.S. No. 4 not more than 5.0 percent, grade U.S. No. 5 not more than 10.0 percent, and grade U.S. No. 6 not more than 15.0 percent of well-milled kernels. Grade U.S. No. 5 shall contain not more than 10.0 percent of red rice and damaged kernels (singly or combined) and in no case more than 6.0 percent of damaged kernels.

(e) *Glutinous milled rice.* Glutinous milled rice shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. For long grain, medium grain, and short grain milled rice, grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels. For second head milled rice, grade U.S. No. 1 shall contain not more than 4.0 percent of nonchalky

kernels, grade U.S. No. 2 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 10.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 15.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 20.0 percent of nonchalky kernels. For screenings milled rice, there are no grade limits for percent of nonchalky kernels. For brewers milled rice, the special grade ''Glutinous milled rice'' is not applicable.

NOTE: The maximum limits for ''Chalky kernels,'' shown in §§868.310, 868.311, and 868.312 are not applicable to the special grade ''Glutinous milled rice.''

(f) *Aromatic milled rice.* Aromatic milled rice shall be special varieties of rice (Oryza sativa L. scented) that have a distinctive and characteristic aroma; e.g., basmati and jasmine rice.

(Secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624)

[42 FR 40869, Aug. 12, 1977; 42 FR 64356, Dec. 23, 1977, as amended at 48 FR 24859, June 3, 1983; 54 FR 21403, 21407, May 18, 1989; 56 FR 55981, Oct. 31, 1991; 58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995; 67 FR 61252, Sept. 30, 2002]

### § 868.316 Special grade designation.

The grade designation for coated, granulated brewers, parboiled, undermilled, glutinous, or aromatic milled rice shall include, following the class, the word(s) ''Coated,'' ''Granulated,'' ''Parboiled Light,'' ''Parboiled,'' ''Parboiled Dark,'' ''Undermilled,'' ''Glutinous,'' or ''Aromatic,'' as warranted, and all other information prescribed in §868.314.

[58 FR 68016, Dec. 23, 1993. Redesignated and amended at 60 FR 16364, 16365, Mar. 30, 1995]