people or operations that have benefited from the project’s accomplishments, and/or the potential economic impact of each project.

(5) Lessons Learned. Lessons learned, results, conclusions, for each project. If outcome measures were not achieved, identify and share the lessons learned to help expedite problem-solving.

(6) Contact Person. List the contact person for each project with telephone number and email address.

(7) Additional Information. Include other relevant project information available (e.g. publications, Web sites, photographs).

(c) A final SF–269A “Financial Status Report (Short Form)” or SF–269 “Financial Status Report (Long Form)” if the project(s) had program income, is required within 90 days following the expiration date of the grant period.

(d) AMS will monitor States, as it determines necessary, to assure that projects are completed in accordance with the approved State plan. If AMS, after reasonable notice to a State, and opportunity to be heard, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, AMS may disqualify, for one or more years, the State from receipt of future grants under the SCBGP or SCBGP–FB.

(e) States shall diligently monitor performance to ensure that time schedules are being met, project work within designated time periods is being accomplished, and other performance measures are being achieved.

[73 FR 51589, Sept. 4, 2008, as amended at 74 FR 13318, Mar. 27, 2009]

§ 1291.11 Audit requirements.

Each year that a State receives a grant under the SCBGP–FB, the State is required to conduct an audit of the expenditures of SCBGP–FB funds. If the Single Audit Act applies to an eligible grantee, the State shall submit the annual audit results to AMS within 30 days after completion of the audit. If the Single Audit Act does not apply, the State shall conduct an audit of all SCBGP–FB funds no later than 60 days after the end date of the grant agreement. The State shall submit to AMS not later than 30 days after completion of the audit, a copy of the audit results.
CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE


SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1400</td>
<td>417</td>
</tr>
<tr>
<td>1401</td>
<td>437</td>
</tr>
<tr>
<td>1402</td>
<td>442</td>
</tr>
<tr>
<td>1403</td>
<td>443</td>
</tr>
<tr>
<td>1404</td>
<td>455</td>
</tr>
<tr>
<td>1405</td>
<td>456</td>
</tr>
<tr>
<td>1407</td>
<td>459</td>
</tr>
<tr>
<td>1409</td>
<td>459</td>
</tr>
</tbody>
</table>

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1410</td>
<td>465</td>
</tr>
<tr>
<td>1412</td>
<td>487</td>
</tr>
<tr>
<td>1413</td>
<td>522</td>
</tr>
<tr>
<td>1415</td>
<td>526</td>
</tr>
<tr>
<td>1416</td>
<td>542</td>
</tr>
<tr>
<td>1421</td>
<td>561</td>
</tr>
<tr>
<td>1423</td>
<td>597</td>
</tr>
<tr>
<td>1424</td>
<td>600</td>
</tr>
<tr>
<td>1425</td>
<td>606</td>
</tr>
</tbody>
</table>

415
<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1427</td>
<td>Cotton .......................................................... 612</td>
</tr>
<tr>
<td>1429</td>
<td>Asparagus revenue market loss assistance payment program ........................................... 646</td>
</tr>
<tr>
<td>1430</td>
<td>Dairy products ....................................................... 651</td>
</tr>
<tr>
<td>1434</td>
<td>Nonrecourse marketing assistance loan and LDP regulations for honey .......................... 679</td>
</tr>
<tr>
<td>1435</td>
<td>Sugar program ........................................................ 699</td>
</tr>
<tr>
<td>1436</td>
<td>Farm Storage Facility Loan Program regulations ................................................................. 711</td>
</tr>
<tr>
<td>1437</td>
<td>Noninsured Crop Disaster Assistance Program ................................. 724</td>
</tr>
<tr>
<td>1450</td>
<td>Biomass Crop Assistance Program (BCAP) ........................................... 749</td>
</tr>
<tr>
<td>1455</td>
<td>Voluntary Public Access and Habitat Incentive Program ...................................................... 765</td>
</tr>
<tr>
<td>1463</td>
<td>2005–2014 Tobacco Transition Program .................................................. 770</td>
</tr>
<tr>
<td>1465</td>
<td>Agricultural Management Assistance .......................................................... 786</td>
</tr>
<tr>
<td>1466</td>
<td>Environmental Quality Incentives Program ..................................................................... 795</td>
</tr>
<tr>
<td>1467</td>
<td>Wetlands Reserve Program .......................................................... 814</td>
</tr>
<tr>
<td>1468</td>
<td>Conservation Farm Option .......................................................... 828</td>
</tr>
<tr>
<td>1469</td>
<td>Conservation Security Program .......................................................... 838</td>
</tr>
<tr>
<td>1470</td>
<td>Conservation Stewardship Program .......................................................... 857</td>
</tr>
<tr>
<td>1484</td>
<td>Programs to help develop foreign markets for agricultural commodities .................. 873</td>
</tr>
<tr>
<td>1485</td>
<td>Grant agreements for the development of foreign markets for U.S agricultural commodities .......................................................................................... 887</td>
</tr>
<tr>
<td>1486</td>
<td>Emerging Markets Program ........................................................................ 914</td>
</tr>
<tr>
<td>1487</td>
<td>Technical assistance for specialty crops .................................................. 925</td>
</tr>
<tr>
<td>1488</td>
<td>Financing of sales of agricultural commodities .................................................. 928</td>
</tr>
<tr>
<td>1491</td>
<td>Farm and Ranch Lands Protection Program .................................................. 939</td>
</tr>
<tr>
<td>1492</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>1493</td>
<td>CCC Export Credit Guarantee Programs .................................................. 950</td>
</tr>
<tr>
<td>1494</td>
<td>Export Bonus Programs ........................................................................ 996</td>
</tr>
<tr>
<td>1495</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>1499</td>
<td>Food for Progress Program ........................................................................ 1014</td>
</tr>
</tbody>
</table>

CROSS REFERENCE: For regulations relative to standards, inspections, and marketing practices, see Chapter I of this title.
SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS

Subpart A—General Provisions

Sec.
1400.1 Applicability.
1400.2 Administration.
1400.3 Definitions.
1400.4 Indian Tribe.
1400.5 Denial of program benefits.
1400.6 Joint and several liability.
1400.7 Equitable treatment.
1400.8 Appeals.

Subpart B—Payment Limitation

1400.100 Revocable trust.
1400.101 Minor children.
1400.102 States, political subdivisions, agencies thereof.
1400.103 Charitable organizations.
1400.104 Changes in farming operations.
1400.105 Attribution of payments.
1400.106 Payment limits.
1400.107 Notification of interests.

Subpart C—Payment Eligibility

1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.
1400.202 Persons.
1400.203 Joint operations.
1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar legal entities.
1400.205 Trusts.
1400.206 Estates.
1400.207 Landowners.
1400.208 Family members.
1400.209 Sharecroppers.
1400.210 Deceased and incapacitated persons.
1400.211 Persons and legal entities not considered to be actively engaged in farming.
1400.212 Growers of hybrid seed.
1400.213 Military personnel.

Subpart D—Cash Rent Tenants

1400.301 Eligibility.

Subpart E—Foreign Persons

1400.401 Eligibility.
1400.402 Notification.

Subpart F—Average Adjusted Gross Income Limitation

1400.500 Applicability.
1400.501 Determination of average adjusted gross income.
1400.502 Compliance and enforcement.
1400.503 Commensurate reduction.


Source: 73 FR 79273, Dec. 29, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) This part, except as otherwise noted, is applicable to all of the following programs and any other programs as provided in individual program regulations in this chapter (including, but not limited to, all price support programs in parts 1421, 1430, and 1434 of this chapter):
(1) The Direct and Counter-cyclical Program (DCP), including the Average Crop Revenue Election (ACRE), part 1412 of this chapter;
(2) The Conservation Reserve Program (CRP), part 1410 of this chapter with respect to contracts approved on or after October 1, 2008;
(3) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;
(4) The Supplemental Revenue Assistance Program (SURE), part 760 of this title;
(5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance Program for Livestock, Honey Bees and Farm-raised Fish (ELAP), part 760 of this title;
(6) The Tree Assistance Program (TAP), part 760 of this title; and
(7) The Natural Resource Conservation Service (NRCS) conservation programs of this title including Agricultural Management Assistance (AMA), Agricultural Water Enhancement Program (AWEP), Chesapeake Bay Watershed Program (CBWP), Conservation
§ 1400.2

Stewardship Program (CSTP), Cooperative Conservation Partnership Initiative (CCPI), Environmental Quality Incentives Program (EQIP), Farm and Ranchland Protection Program (FRPP), Grasslands Reserve Program (GRP), Wetlands Reserve Program (WRP), and Wildlife Habitat Incentive Program (WHIP).

(8) Subparts C and D of this part do not apply to the programs listed in paragraphs (a)(2) through (a)(7) of this section.

(b) This part will apply to the programs specified in:

(1) Paragraphs (a)(1), (3), (4), and (6) of this section on a crop year basis;

(2) To the program in paragraph (a)(2) of this section on a fiscal year basis;

(3) To the programs in paragraph (a)(5) of this section on a calendar year basis; and

(4) To the programs in paragraph (a)(7) of this section based on available funding.

(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as provided in individual program regulations in this chapter.

(d) Where more than one provision of this part may apply, the provision which is most restrictive on the program participant will be applied.

(e) The payment limitations of this part are not applicable to:

(1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary and

(2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

<table>
<thead>
<tr>
<th>Payment or benefit</th>
<th>Limitation per person or legal entity, per crop, program, or fiscal year</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Direct Payments for covered commodities</td>
<td>$40,000</td>
</tr>
<tr>
<td>(2) Direct Payments for peanuts</td>
<td>40,000</td>
</tr>
<tr>
<td>(3) CRP annual rental payments</td>
<td>50,000</td>
</tr>
<tr>
<td>(4) GRP</td>
<td>50,000</td>
</tr>
<tr>
<td>(5) WHIP</td>
<td>50,000</td>
</tr>
<tr>
<td>(6) WRP</td>
<td>50,000</td>
</tr>
<tr>
<td>(7) Counter-Cyclical Payments for covered commodities</td>
<td>65,000</td>
</tr>
<tr>
<td>(8) Counter-Cyclical Payments for peanuts</td>
<td>65,000</td>
</tr>
<tr>
<td>(9) NAP payments</td>
<td>100,000</td>
</tr>
<tr>
<td>(10) Supplemental Agricultural Disaster Assistance</td>
<td>100,000</td>
</tr>
<tr>
<td>(11) TAP</td>
<td>100,000</td>
</tr>
<tr>
<td>(12) CSTP</td>
<td>200,000</td>
</tr>
<tr>
<td>(13) EQIP</td>
<td>300,000</td>
</tr>
</tbody>
</table>

1 If the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.

2 Limitation is applicable to annual rental payments received directly and indirectly from all CRP contracts regardless of contract approval date, except payments received directly and indirectly under CRP contracts approved prior to October 1, 2008, may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.

3 The payment limit does not apply to payments for perpetual or 30 year easements or under 30 year contracts.

4 Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm that is participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.

5 Total payments received under Supplemental Agricultural Disaster Assistance through SURE, LIP, LFP, and ELAP may not exceed $100,000.

6 The $200,000 limit is the total limit for 2009 through 2012.

Note: AMA, AWEP, CBWP, CCPI, and FRPP are all limited by available funding rather than an amount by participant.

(g) With respect to contracts for conservation programs approved prior to October 1, 2008, the payment limitation rules in 7 CFR part 1400 in effect on September 30, 2008 will be applicable (see 7 CFR part 1400, revised as of January 1, 2008).


§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (referred to as “State committee” and “county committee,” respectively).

(b) State executive directors, county executive directors, and State and
county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee. The State committee may also:

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

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

(d) No delegation in this part to a State or county committee precludes the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial payment eligibility determinations will be made within 60 days after the required forms and any other supporting documentation needed in making such determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(g) Initial determinations concerning the provisions of this part will be made by the FSA State office with respect to any farm operating plan that is for a joint operation with six or more members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted at any time to determine compliance with applicable statutes and regulations. The completion of such reviews is not subject to the time constraints specified in paragraph (f) of this section.


§ 1400.3 Definitions.

(a) The terms defined in part 718 of this title are applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this part:

Active personal labor means personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops on CRP acreages and those physical activities necessary in livestock operations.

Active personal management means personally providing and participating in:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation, including:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on CRP acreage and activities required in livestock operations;

(ii) Business-related actions, which include discretionary decision making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;
§ 1400.3

(vii) Acquiring technical information used in the farming operation; and

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Administrator means the Administrator of the Farm Service Agency including any designee of the Administrator.

Alien means any person not a citizen or national of the United States.

Attribution means the combination of any payment made directly to a person or legal entity with the person’s or legal entity’s pro rata direct and indirect interest in payments received by a legal entity, joint venture, or general partnership.

Average Adjusted Gross Farm Income means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry for the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Nonfarm Income means the difference between the average adjusted gross income for the person or legal entity and the average adjusted gross farm income for the person or legal entity.

Capital means the funding provided by a person or legal entity to the farming operation, independent and separate from all other farming operations, in order for such operation to conduct farming activities. In determining whether a person or legal entity has independently contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other person or legal entity involved in such operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution must be a direct out-of-pocket input of a specified sum or an amount borrowed by the person or legal entity and does not include advance program payments.

Chief means the Chief of the Natural Resources Conservation Service including any designee of the Chief (also referred to in this part as NRCS Chief).

Contribution means providing land, capital, or equipment assets, and the actions of providing active personal labor or active personal management to a farming operation in exchange for, or with the expectation of, deriving benefit based solely on the success of the farming operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency including any designee.

Equipment means the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on CRP acreages and those needed to conduct livestock operations. Such equipment may be leased from any source. If such equipment is leased from another person or legal entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family member means a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation that is eligible to receive payments, directly or indirectly, under one or more of the programs specified in §1400.1. A person or legal entity may have more than one farming operation if such person or legal entity is a member of one or more joint operations.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including
any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

**Interest in a farming operation** means one of the following:

(1) Owner or renter of the land in the farming operation;
(2) An interest in the agricultural products, commodities, or livestock produced by the farming operation; or
(3) A member of a joint operation that either owns or rents land in the farming operation or has an interest in the agricultural products, commodities, or livestock produced by the farming operation.

**Irrevocable trust** means a trust as specified in this definition. Any trust not meeting this definition will be considered a revocable trust. A trust may be considered to be an irrevocable trust only if:

1. The trust cannot be modified or terminated by the grantor;
2. The grantor has no future, contingent, or remainder interest in the corpus of the trust; and
3. The trust agreement does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the death of the grantor or income beneficiary.

**Joint operation** means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

**Land** means farmland that meets the specific requirements of the applicable program. Such land may be leased from any source. If such land is leased from another person or legal entity with an interest in the crop or crop proceeds, such land must be leased at a fair market value.

**Lawful alien** means any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

**Legal entity** means an entity created under Federal or State law and that:

1. Owns land or an agricultural commodity, product, or livestock; or
2. Produces an agricultural commodity, product, or livestock.

**Payment** means:

1. Payments made in accordance with part 1412 or successor regulation of this chapter;
2. CRP annual rental payments made in accordance with part 1410 or successor regulation of this chapter;
3. NAP payments made in accordance with part 1437 or successor regulation of this chapter; and
4. For other programs, any payments designated in individual program regulations in this chapter.

**Person** means an individual, natural person and does not include a legal entity.

**Public school** means a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

**Secretary** means the Secretary of the United States Department of Agriculture.

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

**Significant contribution** means the provision of the following to a farming operation:

1. For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person’s or legal entity’s commensurate share of the total:
   A. Value of the capital necessary to conduct the farming operation;
   B. Rental value of the land necessary to conduct the farming operation; or
§ 1400.4 Indian Tribe.

Provisions of this part do not apply to Indian tribes as defined in §1400.3.

§ 1400.5 Denial of program benefits.

(a) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part.

(b) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part and adopts or participates in adopting a scheme or device designed to evade this part, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No crops are grown or agricultural commodities produced by the represented operation;

(ii) The represented operation has no appreciable assets;

(iii) The only source of capital for the operation is the program payments; or

(iv) The represented operation exists only for the receipt of program payments.

(c) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to

Substantial amount of active personal labor means the provision of active personal labor to a farming operation in an amount described by the smaller of the following:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to the person’s or legal entity’s commensurate share in the farming operation.

Total value of the farming operation means the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.
Commodity Credit Corporation, USDA

§ 1400.9

evade, or that has the purpose of evading, the provisions of 7 U.S.C. 1308, 1308–1, or 1308–3, as amended, such person or legal entity will be ineligible to receive payments under the programs specified in §1400.1 in the year for such scheme or device was adopted and the succeeding year.

(d) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a five-year denial of all program benefits. Such other equally serious actions may include, but are not limited to:

(1) Knowingly engaged in, or aided in the creation of a fraudulent document;
(2) Failed to disclose material information relevant to the administration of the provisions of this part, or
(3) Any other actions of a person or legal entity determined by the Deputy Administrator as designed or intended to circumvent the provisions of this subpart.

(e) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance to the interest held by the person or legal entity in any other legal entity or joint operations and
(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

§ 1400.6 Joint and several liability.

(a) Any legal entity, including joint operations, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade the payment limitation provisions, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the payment limitation and payment eligibility provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.7 [Reserved]

§ 1400.8 Equitable treatment.

(a) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the Administrator may be accepted as meeting the requirements of this part to the extent the Administrator deems necessary to provide fair and equitable treatment to such person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to such person or legal entity.

§ 1400.9 Appeals.

(a) A person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth in part 780 of this title. With respect to such appeals, the applicable reviewing authority will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal and
(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) will not apply if:

(1) The appellant, or the appellant’s representative, requests a postponement of the scheduled hearing;
(2) The appellant, or the appellant’s representative, requests additional time following the hearing to present additional information or a written closing statement;
(3) The appellant has not timely presented information to the reviewing authority; or

§ 1400.7 [Reserved]

§ 1400.8 Equitable treatment.

(a) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the Administrator may be accepted as meeting the requirements of this part to the extent the Administrator deems necessary to provide fair and equitable treatment to such person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to such person or legal entity.

§ 1400.9 Appeals.

(a) A person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth in part 780 of this title. With respect to such appeals, the applicable reviewing authority will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal and
(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) will not apply if:

(1) The appellant, or the appellant’s representative, requests a postponement of the scheduled hearing;
(2) The appellant, or the appellant’s representative, requests additional time following the hearing to present additional information or a written closing statement;
(3) The appellant has not timely presented information to the reviewing authority; or
§ 1400.100

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer’s appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

Subpart B—Payment Limitation

§ 1400.100 Revocable trust.

A revocable trust and the grantor of the trust will be considered to be the same person.

§ 1400.101 Minor children.

(a) Except as provided in paragraph (b) of this section, payments received by a child under 18 years of age as of June 1 of the applicable crop, program, or fiscal year, including such a person who is the beneficiary of a trust or who is an heir of an estate, will be attributed for the entire crop, program, or fiscal year to the parent receiving the greater amount of program payments subject to this part or to any court-appointed person such as a guardian or conservator who is responsible for the minor.

(b) Payments received by a minor will not be attributed to the minor’s parent or to any court-appointed person such as a guardian or conservator who is responsible for the minor if all of the following apply:

(1) The minor is a producer on a farm and the minor’s parents or any court-appointed person such as guardian or conservator who is responsible for the minor, does not have any interest in the farm;

(2) The minor has established and maintains a separate household from the minor’s parents or any court-appointed person such as a guardian or conservator who is responsible for the minor, and such minor personally carries out the farming activities with respect to the minor’s farming operation for which there is a separate accounting;

(3) The minor does not live in the same household as such minor’s parents and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor and

(ii) Ownership of the farm is vested in the minor;

(c) A person will be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person’s status as a minor.


§ 1400.102 States, political subdivisions, and agencies thereof.

(a) A State, political subdivision, and agency thereof, is not eligible for payments or benefits under programs specified in § 1400.1(a)(1), unless the exception provided in paragraph (b) of this section applies.

(b) Subject to the limitation in paragraph (c) of this section, a State, political subdivision, and any agency thereof, may receive payments or benefits under programs specified in § 1400.1 if both of the following apply:

(1) The land for which payments are received is owned by the State, political subdivision, and any agency thereof, and

(2) The payments are used solely for the support of public schools;

(c) The total payments described in paragraph (b) of this section cannot exceed $500,000 annually except for States with a population less than 1,500,000, as established by the most recent U.S. Census Bureau annual estimate of such State’s resident population.


§ 1400.103 Charitable organizations.

(a) A charitable organization, including a club, society, fraternal organization, or religious organization will be considered a separate legal entity for payment limitation purposes to the extent that such an entity is independently engaged in the production of crops, agricultural commodities, or
livestock, except where the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over such organization.

(b) If the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over the charitable organization, payments to the charitable organization will be attributed to the parent organization.

§ 1400.104 Changes in farming operations.

(a) Any change in a farming operation that would increase the number of persons or legal entities to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following will be considered to be a substantive change in the farming operation:

(1) The addition of a family member to a farming operation in accordance with §1400.208, except that such an addition will not affect the status of any other person or legal entity that is added to the farming operation; or

(2) With respect to a landowner only, a change from a cash rent to a share rent; or

(3) An increase through the acquisition of base acres not previously involved in the farming operation of at least 20 percent or more in the total base acres involved in the farming operation.

(i) For the purpose of payment limitations, such an increase in base acres will be considered an applicable bona fide and substantive change for the increase of only one person or legal entity to the farming operation, unless:

(ii) A representative of the State FSA office determines, based on the magnitude and complexity of the change represented, the increase in base acres supports additional persons or legal entities to the farming operation; or

(4) A change in ownership by sale or gift of equipment from a person or legal entity previously engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if:

(i) The transferred amount of such equipment is commensurate with the new person’s or legal entity’s share of the farming operation,

(ii) The sale or gift of the equipment was based on the equipment’s fair market value,

(iii) The former owner of the equipment has no direct or indirect control over such equipment,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the equipment at a later date; or

(5) A change in ownership by sale or gift of land from a person or legal entity who previously has been engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if:

(i) The transferred amount of such land is commensurate with the new person’s or legal entity’s share of the farming operation,

(ii) The sale or gift of land was based on the land’s fair market value,

(iii) The former owner of the land has no direct or indirect control over such land,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the land at a later date.

(b) Unless the requirements in paragraph (a) of this section are met, the increase in persons or legal entities in the farming operation will not be recognized for payment limitation purposes and the additional persons or legal entities are not eligible for program payment identified in §1400.1 otherwise resulting from the farming operation.


§ 1400.105 Attribution of payments.

(a) A payment made directly to a person or legal entity will be combined with the pro rata interest of the person or legal entity in payments received by a legal entity in which the person or legal entity has a direct or indirect
ownership interest, unless the payments of the legal entity have been reduced by the pro rata share of the person or legal entity.

(b) A payment made to a legal entity will be attributed to those persons who have a direct and indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the pro rata share of the person.

(c) Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-tier or payment legal entity;

(2)(i) Second level of ownership—any payment made to a first-tier legal entity that is owned in whole or in part by another legal entity (referred to as a second-tier legal entity) will be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity;

(ii) If the second-tier legal entity is owned in whole or in part by a person, the amount of the payment made to the first-tier legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(3) Third and fourth levels—except as provided in paragraph (2)(ii) of this section, any payments made to a legal entity at the third and fourth tiers of ownership will be attributed in the same manner as specified in paragraph (2)(i) of this section.

(4) Fourth-tier ownership—if the fourth-tier of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-tier or payment legal entity in the amount that represents the indirect ownership in the first-tier or payment legal entity by the fourth-tier legal entity.

(d) For purposes of administering direct attribution, and to determine a person's or legal entity's ownership interest in a legal entity that receives a payment subject to limitation, the ownership interest on June 1 of each year will be used.

(1) If the change in ownership interest is due to the death of an interest holder in the legal entity or the legal entity did not exist on June 1 of the applicable year, the Deputy Administrator may determine that a change after June 1 is considered relevant or effective for the current year.

(2) Changes that occur after June 1 cannot be used to increase the amount of program payments a legal entity, or its members, is eligible to receive directly or indirectly for the applicable year.

(e) Direct attribution of payments is not applicable to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association. The payments will instead be attributed to the producers as persons.


§ 1400.106 Payment limits.

(a) Payments made to a person or legal entity will not exceed the amounts specified in subpart A of this part.

(b) Payments made to a joint operation cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than joint operations, that comprise the ownership of the joint operation.

(c) Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has otherwise reached the applicable maximum payment limitation.


§ 1400.107 Notification of interests.

(a) In order to be eligible to receive any payment specified in subpart A of
Commodity Credit Corporation, USDA § 1400.202

this part, or any other program as provided in individual program regulations in this chapter, a person or legal entity must, provide information in the manner as prescribed by the Deputy Administrator.

(b) The information required to be submitted under paragraph (a) of this section must include:

(1) The name and social security number of each person, or the name and taxpayer identification number of each legal entity, that holds or acquires an ownership interest in the legal entity and

(2) The name and taxpayer identification number of each legal entity in which the person or legal entity holds an ownership interest.

Subpart C—Payment Eligibility

§ 1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.

(a) To be considered eligible to receive payments with respect to a particular farming operation, a person or legal entity must be actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the person or legal entity:

(1) Independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person’s or legal entity’s contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person’s or legal entity’s claimed share of the farming operation.

(c) All of the following factors will be taken into consideration in determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, or a combination of capital, equipment, or land, to the farming operation:

(1) A separate and distinct interest in the land, crop, and livestock involved in the farming operation;

(2) The demonstration of separate and total responsibility for the interest in the land, crop, and livestock in the farming operation; and

(3) All funds and business accounts of the farming operation are separate from that of any other person and legal entity.

(d) In determining if the person or legal entity is independently and separately contributing a significant amount of active personal labor or active personal management, all of the following factors will be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area;

(3) The total amount of labor and management necessary for such a farming operation in the area; and

(4) Whether the person or legal entity receives compensation for the labor and management activities.

§ 1400.202 Persons.

(a) A person will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The person independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person’s or legal entity’s contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person’s or legal entity’s claimed share of the farming operation.
(b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

(c) If a farming operation is conducted by a person, and the capital, land, or equipment is contributed by the person, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1)(i) of this section, must be contributed directly by the person and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by:

(A) Any other person, joint operation, or legal entity that has an interest in such farming operation;

(B) Such person, joint operation, or legal entity by any other person, joint operation, or legal entity that has an interest in such farming operation;

(2) To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.


§ 1400.203 Joint operations.

(a) A member of a joint operation will be considered to be actively engaged in farming with respect to a farming operation if the member:

(1) Makes a significant contribution of:

(A) Capital, equipment, or land or a combination of capital, equipment, or land and

(B) Active personal labor or active personal management, or a combination of active personal labor and active personal management, and that are:

(A) Performed on a regular basis,

(B) Identifiable and documentable, and

(C) Separate and distinct from such contributions of any other member of the farming operation;

(2) Has a share of the profits or losses from the farming operation commensurate with the member’s contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the member’s claimed share of the farming operation.

(b) For a farming operation conducted by a joint operation in which the capital, land, or equipment is contributed by such joint operation, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1)(i) of this section, and if contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by:

(A) Any person, legal entity, or other joint operation that has an interest in such farming operation, including either joint operation’s members;

(B) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(C) Any person, legal entity, or other joint operation in whose farming operation such joint operation has an interest, and

(2) To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of §1400.201(b)(2) and (b)(3), the members of the joint operation who make a significant contribution of active personal labor, active personal
Commodity Credit Corporation, USDA § 1400.205

management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will be considered to be actively engaged in farming with respect to such farming operation.


§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The legal entity independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(2) Each partner, stockholder, or member with an ownership interest or their spouse with an ownership interest makes a contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation; that are:

(i) Performed on a regular basis;

(ii) Identifiable and documentable; and

(iii) Separate and distinct from such contributions of any other partner, stockholder or member of the farming operation;

(3) The collective contribution of the partners, stockholders and members is significant and commensurate;

(4) The legal entity has a share of the profits or losses from the farming operation commensurate with the legal entity’s contributions to the operation; and

(5) The legal entity makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity’s claimed share of the farming operation.

(b) If any partner, stockholder, or member fails to meet the requirements in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.

(c) An exception to paragraph (b) of this section will apply if:

(1) At least 50 percent of the stock is held by partners, stockholders, or members that are actively providing labor or management and

(2) The partners, stockholders, or members are collectively receiving, directly or indirectly, total payments equal to or less than one payment limitation.

(d) For a farming operation conducted by a legal entity in which the capital, land, or equipment is contributed by the legal entity, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1) of this section, must be contributed directly by the legal entity and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the legal entity’s members;

(ii) Such legal entity by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such legal entity has an interest, and

(2) To meet the requirements of paragraphs (a)(4) and (a)(5) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.


§ 1400.205 Trusts.

A trust will be considered to be actively engaged in farming with respect to a farming operation if:
§ 1400.206 Estates.

(a) For 2 program years after the program year in which a person dies, the person’s estate will be considered to be actively engaged in farming if:

(1) The estate, as a legal entity, makes a significant contribution of either:

(i) Capital, equipment, or land or
(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management or
(ii) The combination of active personal labor and active personal management; and

(3) The estate has a share of the profits or losses from the farming operation commensurate with the legal entity’s contributions to the operation; and

(4) The estate makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity’s claimed share of the farming operation; and

(5) The representative of the estate has provided a tax identification number for the estate and a copy of a court order, will, or other legal document that identifies the heir(s) and tax identification number(s) of the heir(s).

(b) For a farming operation conducted by a trust in which the capital, land, or equipment is contributed by the trust, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the trust’s income beneficiaries;

(ii) Any person, legal entity, or joint operation in whose farming operation such trust has an interest, and

(iii) Any person, legal entity, or joint operation in whose farming operation such trust has an interest, and

(2) To meet the requirements of paragraphs (c) and (d) of this section and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(f) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(g) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

Commodity Credit Corporation, USDA § 1400.209

(a) Notwithstanding the provisions of §§1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom are family members, an adult family member who makes a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management will be considered to be actively engaged in farming if the adult family member meets the provisions in paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

1. Have a share of the profits or losses from the farming operation commensurate with such person’s contributions to the operation and

2. Make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with such person’s claimed share of the farming operation.

§ 1400.208 Family members.

(a) Notwithstanding the provisions of §§1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom are family members, an adult family member who makes a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management will be considered to be actively engaged in farming if the adult family member meets the provisions in paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

1. Have a share of the profits or losses from the farming operation commensurate with such person’s contributions to the operation and

2. Make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with such person’s claimed share of the farming operation.

§ 1400.209 Sharecroppers.

(a) Notwithstanding the provisions of §§1400.201 through 1400.206 of this part, with respect to a person who is a sharecropper, such person will be considered to be actively engaged in farming if the sharecropper meets the provisions of paragraph (b) of this section.

(b) A sharecropper who elects to be considered actively engaged in farming under this section must:

1. Make a significant contribution of active personal labor to the farming operation;

2. Have a share of the profits or losses from the farming operation commensurate with such person’s contribution to the operation; and
§ 1400.210 Deceased and incapacitated persons.

If the person dies or is incapacitated before a determination is made that the person is “actively engaged in farming,” the representative of the deceased person’s estate or the incapacitated person, or other person if necessary, must provide the determining authority information to verify that such person did make a conscious effort to and would have been determined to be actively engaged in farming if not for the person’s death or incapacitation. If the person dies or is incapacitated after being determined to be “actively engaged in farming,” the determining authority will allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such person or the person’s estate must meet all necessary requirements in order to be determined to be “actively engaged in farming” for that year.

§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.

Any person or legal entity that does not satisfy all of the applicable provisions of §§1400.201 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in §1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to such cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor or
(2) Significant contributions of both active personal management and equipment.

(b) If the equipment is leased by the tenant from:

(1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area or
(2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.

(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop.
year. Complete control is defined as exclusive access and use by the tenant.

(d) If the cash rent tenant is a joint operation, then each member or their spouse must make a significant contribution of active personal labor or active personal management as specified in §1400.204(a)(2) to be considered eligible for the member’s share of the program payments received by the joint operation on the cash rented land.

(e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in §1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.


Subpart E—Foreign Persons

§1400.401 Eligibility.

(a) Subject to the conditions set out in paragraphs (b) and (c) of this section, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101–1178) will be ineligible to receive any type of loans or payments made available under Title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714–714o), or subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836), or under any contract entered into under Title XII of that Act (16 U.S.C. 3801–3845), with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm. Likewise, and subject to the same conditions, such persons may be ineligible for payments under any other program which by its own regulations specifically provides for such an ineligibility and adopts these regulations.

(b)(1) A corporation or other legal entity will be ineligible to receive payments, loans, and benefits if more than 10 percent of the ownership of the legal entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign person who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such a legal entity. However, upon the written request of the legal entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the legal entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such legal entity.

(2) In determining whether more than 10 percent of the ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the legal entity or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other legal entity must inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the legal entity will refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, a person’s or legal entity’s percentage share of the limited partnership, corporation, or other similar legal entity will be based upon the outstanding shares of stock or other similar unit of ownership held by the person or legal entity as compared to the
total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar legal entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar legal entity owned by a person or legal entity will be determined by the Deputy Administrator on the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, such percentage share will be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by a person or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.


§ 1400.402 Notification.

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the legal entity conducts its farming operation if:

(1) Any person, group of persons, legal entity, or group of legal entities holds more than a 10 percent interest in such legal entity; and

(2) Such person, group of persons, legal entity, or group of legal entities, in accordance with §1400.401, are ineligible to receive a payment, loan, or benefit.

(b) Such written notification must include the name and social security number or taxpayer identification number of such a person or legal entity, if known, and of all persons and legal entities that hold an interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

Subpart F—Average Adjusted Gross Income Limitation

§ 1400.500 Applicability.

(a) For the 2009 through 2012 crop, program, or fiscal years, a person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in §1400.1 if the average adjusted gross income of the person or legal entity exceeds the amounts in paragraphs (b) through (d) of this section for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) For 2009 through 2012 commodity programs set forth in §1400.1, a person or legal entity with an average adjusted gross nonfarm income as defined in §1400.3 that exceeds $500,000 will not be eligible to receive program payments or benefits as identified in §1400.1.

(c) For 2009 through 2012 commodity programs set forth in §1400.1, a person or legal entity that has an average adjusted gross farm income as defined in §1400.3 that exceeds $750,000 will not be eligible to receive a direct payment and other payments made applicable by statute or regulation.

(d) For 2009 through 2012 conservation programs set forth in §1400.1, a person or legal entity that has an average adjusted gross nonfarm income as defined in §1400.3 that exceeds $1,000,000 will not be eligible to receive payments or benefits under conservation and related programs, and other programs made applicable by statute or regulation, unless:

(1) Not less than 66.66 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income; or

(2) This limitation may be waived on a case-by-case basis by the Administrator or NRCS Chief for the protection of environmentally sensitive land of special significance. Such a written waiver request must document that land within or adjacent to the producer’s agricultural operation contains
critical resources such as, but not limited to, threatened, endangered, or at-risk species; historical or cultural resources; unique wetlands; or critical groundwater recharge areas. In addition, the waiver request must either:

(i) Show that use of conservation program funding by an individual producer is critical to the success of a project that benefits multiple producers in a community, watershed, or other geographic area or

(ii) Achieve enduring conservation treatment through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land.

(e) Determinations made under this subpart with regard to conservation programs will be based on the year for which the conservation program contract or agreement is approved and the determination will apply for the entire term of the subject agreement or contract.

(f) Vendors that receive payment for technical services provided in conjunction with programs made subject to this subpart by regulation or statute, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.

(g) Payments to an escrow agent, or other legal entity of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant, are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(h) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes as defined in §1400.3 are not subject to this subpart.

§ 1400.501 Determination of average adjusted gross income.

(a) Except as otherwise provided in this subpart, average adjusted gross farm income of a person or legal entity includes income or benefits derived from or related to the following:

(1) Production of crops, specialty crops, and unfinished raw forestry products;

(2) The production of livestock, including but not limited to, cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry, fish and other aquaculture products used for food, honeybees, and products produced by, or derived from, livestock;

(3) The production of farm-based renewable energy;

(4) The sale, including the sale of easements and development rights, of farm, ranch, forestry land, water or hunting rights, or environmental benefits;

(5) The rental or lease of land or equipment, used for farming, ranching, or forestry operations, including water or hunting rights;

(6) The processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities, including renewable energy;

(7) The feeding, rearing, or finishing of livestock;

(8) The sale of land that has been used for agriculture;

(9) Any payment or benefit, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(10) Payments and benefits authorized under any program made applicable to this subpart by statute or regulation;

(11) Any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator; and

(12) Any income reported on the Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to the Internal Revenue Service.

(b) For the specific purpose of determining the average adjusted gross farm income under §1400.500(d)(1), and in addition to §1400.501(a), the average adjusted gross farm income of a person or legal entity includes income or benefits derived from the following:

(1) The sale of equipment to conduct farm, ranch, or forestry operations and

(2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(c) Except as otherwise provided in this subpart, adjusted gross income means:
(1) For a person filing a separate tax return, the amount reported as “adjusted gross income” on the final federal income tax return for the person for the applicable tax year;

(2) For a person filing a joint tax return, the amount reported as “adjusted gross income” on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the persons had filed two separate returns and that this calculation is consistent with the information supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported “taxable income” as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt legal entity, the “unrelated business taxable income” of the legal entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership, or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; or the amount of net increase in the estate’s or trust’s value resulting from its business or investment interests.

(d) For purposes of applying this subpart and calculating the 3-year average referenced in §1400.500, that average will be for the adjusted gross income for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the “old” legal entity. When there is such commonality, income of the “old” legal entity will be averaged with that of the “new” legal entity for the base period.

§ 1400.502 Compliance and enforcement.

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(2) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(3) The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the person’s or legal entity’s income; or

(4) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.
Commodity Credit Corporation, USDA

§ 1401.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or FSA, CCC may, at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

1. By delivery of a commodity to a person at a warehouse or other similar facility;
2. By transfer of negotiable warehouse receipts;
3. By the issuance of certificates which CCC shall redeem in accordance with this part;
4. By the acquisition and use of commodities pledged as collateral for CCC price support loans;
5. By the use of commodities owned by CCC; and
6. By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the

§ 1401.3 Payments to persons with outstanding CCC loans.
producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 1401.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 1470.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 1401.4 Commodity certificates.

(a) General. CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made); or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) Liens, encumbrances, and State law.

(1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) Transferability. Any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The
person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) Exchange of commodity certificate for CCC-owned commodities—(1) General. Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, FSA-USDA, Kansas City, MO 64141–0205.

(2) Minimum quantities. A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC’s option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) CCC-owned commodities stored by a person who submits commodity certificates to CCC. CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) Valuation. Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) Transfer of title. Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) Expiration date. CCC may, at its option, discount or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) Use of commodity certificates to receive loan collateral—(1) General. Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon
submission of the certificate, which is endorsed to CCC, to the county FSA office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC’s option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) **Ineligible commodities.** No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) **Cash redemption start date.** (1) The person to whom a generic certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, at the issuing county FSA office for payment by check in the amount of the certificate on or after the date entered in block D through the expiration date of the certificate. Such person may not exchange the certificate for commodities owned by CCC, except as otherwise agreed upon between such person and CCC.

(2) The person to whom a generic certificate is issued which has an entry of “S/H” in block D may exchange such certificate for commodities owned by CCC.

(3) The person to whom a commodity specific certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, to the Kansas City Commodity Office for the specific commodity entered in block C beginning on the date entered in block D through the expiration date of the certificate. Such certificate may not be exchanged for cash, except as otherwise agreed on by CCC.

(4) All other certificates may be transferred and exchanged as determined and announced by CCC.

(g) **“Generic” and commodity-specific commodity certificates—(1) General.** If a commodity certificate indicates that it is a “generic” certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a “generic certificate”, such certificate may be exchanged for the commodity specified on the certificate, except as may be determined and announced by CCC.

(2) **Cotton program payments.** Certificates issued as payments under the 1991 through 1995 upland cotton program, including payments issued in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, may be exchanged for CCC-owned upland cotton only during such times as determined and announced by CCC.

(3) **Commodities not available in CCC inventory.** Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

(i) **Interest.** With respect to producers who receive commodity certificates in accordance with the wheat, feed grains, upland cotton and rice price support and production adjustment programs authorized by parts 1413 and 1421 of this title, a producer to whom the certificate is issued who exchanges such a certificate with CCC for cash in accordance with this section shall receive interest with respect to such certificate for a 150 day period. Such interest shall be the rate of interest determined in accordance with part
§ 1401.5 In kind payments.

(a) Subject to the provisions of §§1470.2 and 1470.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 1401.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 1401.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(e) Part 790, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

§ 1401.8 Subsequent holders.

(a) General. A person who acquires a commodity certificate from another person shall be considered to be a “subsequent holder” of the certificate. Subsequent holders of certificates who purchased a commodity certificate on or before January 1, 1990 may, after the expiration date specified on the certificate, submit the certificate to CCC for a payment from CCC determined in accordance with paragraph (b) of this section. All certificates must be submitted after January 2, 1991 and on or before May 28, 1991. Certificates submitted after May 28, 1991 shall not be accepted for payment. Certificates shall be considered to be submitted as of the date of the postmark on the envelope containing the certificate. All certificates submitted to CCC for payment shall be retained by CCC.

(b) Payment rates.

(1) Certificates with an expiration date of April 30, 1989 or earlier shall not, in any instance, be eligible for payment by CCC. Certificates which are submitted 18 months after the expiration date specified on the certificate shall not be accepted for payment. Certificates which are submitted 18 months after the expiration date specified on the certificate shall not be accepted for payment by CCC.

(2) Persons who submit to CCC, in accordance with this section, certificates with an expiration date of May 31, 1989 or later shall receive a payment equal to 50 percent of the certificate’s face value if such certificate is submitted within the period which:

(i) Begins 6 months and one day after the expiration date specified on the certificate and

(ii) Ends 18 months after such expiration date.

(3) Persons who submit to CCC in accordance with this section certificates with an expiration date of May 31, 1989 or later shall receive a payment equal...
to 85 percent of the certificate’s face value if such certificate is submitted within the period which:

(i) Begins the day after the expiration date specified on the certificate and

(ii) Ends 6 months after such expiration date.

(c) Transitional rules. In order to provide full benefits under this section to parties whose certificates may decline in value from the date of enactment of section 1122 of the Food, Agriculture, Conservation, and Trade Act of 1990 (November 28, 1990) until the implementation of the provisions of such section, persons who, by January 31, 1991, submit to CCC in accordance with this section certificates with expiration dates of May 31, 1989, June 30, 1989, May 31, 1990, and June 30, 1990, shall receive payments for such certificates as if they had been submitted on November 30, 1990.

(d) Payment limit. (1) No person, as defined in §719.2(r) of this title, shall receive a payment in excess of $1,000, except that any wholly-owned or wholly controlled entity, such as a corporation, shall be considered to be the same person as the person which owns or controls such entity. Any person who adopts or participates in adopting a scheme or device which is designed to evade this limitation or which has the effect of evading this limitation shall be ineligible to receive a payment under this section. Such acts include, but are not limited to:

(i) Concealing information which affects the application of this section;

(ii) Submitting false or erroneous information;

(iii) Creating fictitious entities for the purpose of evading the application of this section.

(2) No payment shall be paid to a person which is in excess of the amount which the person paid for the certificate.

(e) Application. In order to receive a payment under this section, a person must:

(1) Submit certificates with an expiration date of May 31, 1989, or later with a completed Form CCC–8 to CCC postmarked by May 28, 1991;

(2) Submit no earlier than January 2, 1991 all certificates and Forms CCC–8 to CCC by mail at the following address: CCC Expired Certificate Exchange, Attn: Claims and Collections Division, P.O. Box 419205, Kansas City, Missouri, 64141–6205;

(3) Submit evidence to CCC which establishes to the satisfaction of CCC:

(i) The date the subsequent holder purchased the certificates;

(ii) The price paid by the subsequent holder for the certificates; and

(iii) If requested by CCC, the name and address of the person from whom the subsequent holder purchased the certificates.

[56 FR 362, Jan. 4, 1991]
Commodity Credit Corporation, USDA

will be published on the FSA Commodity Operations Web site when such opportunities are available.

§ 1402.2 Sales of inventory.

CCC will entertain offers from prospective buyers for the purchase of any commodities owned by CCC, including those commodities that are marketed through commercial, Internet-based marketing services. Various commodities owned by CCC may be offered for sale through commercial, Internet-based marketing services. Interested parties may submit requests for information related to Internet-based commodity sales to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.3 Submission of offers, terms, and conditions.

Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among other things, payment by wire transfer of funds, certified check or cashier’s check before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and in sales that require a commodity to be used for only a specific purpose, documentation that use of the commodity was for only that purpose.

§ 1402.4 Information availability.

The terms and conditions of sale with respect to commodities that are not sold through Internet-based marketing service are available online. Requests for terms and conditions may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.5 Late payments.

If payment is not received by CCC within the period specified in the sales contract, interest will be assessed by CCC. If a buyer fails to make arrangements for payment according to the provisions of the contract, CCC retains the right to terminate the sales contract. If CCC terminates the sales contract for default in whole or in part, CCC may offer the commodity for sale and the original party will be liable to CCC for any losses incurred and damages sustained as a result of the party’s failure to timely remit payment for the commodity.

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.
1403.1 Applicability.
1403.2 Administration.
1403.3 Definitions.
1403.4 Demand for payment of debts.
1403.5 Collection by payment in full.
1403.6 Collection by installment payments.
1403.7 Collection by administrative offset.
1403.8 Withholding.
1403.9 Late payment interest and administrative charges.
1403.10 Waiver of late payment interest and administrative charges.
1403.11 Administrative appeal.
1403.12 Additional administrative collection action.
1403.13 Contact with debtor’s employing agency.
1403.14 Prior provision of rights with respect to debt.
1403.15 Discharge of debts.
1403.16 Referral of delinquent debts to credit reporting agencies.
1403.17 Referral of debts to Department of Justice.
1403.18 Referral of delinquent debts to IRS for tax refund offset.
1403.19 Reporting of discharged debts to IRS.
1403.20 Referral of debts to private collection agencies.
1403.21 Collection of 1988 and 1989 advance deficiency overpayments.


SOURCE: 54 FR 52878, Dec. 22, 1989, unless otherwise noted.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC.


§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Farm Service Agency (FSA).
§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

Administrative offset means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

FSA means the Farm Service Agency of the United States Department of Agriculture (USDA).

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation-related services for compensation.

Certified financial statement means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

CCC means the Commodity Credit Corporation.

Claim means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

Credit reporting agency means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

Debt means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

Debt record refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, FSA, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an FSA office.

Delinquent debt means:

(1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) Any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to §1403.4.

Discharged debt means any debt, or part thereof, which CCC has determined is uncollectible.

IRS means the Internal Revenue Service.

Late payment interest rate means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

Salary offset means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

Settlement means any final disposition of a debt or claim.

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must move in accordance with the terms of a commercial or ocean bill or lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

System of records means a group of any records under the control of CCC or FSA from which information is retrieved by the name of the individual, organization or other entity or by...
Commodity Credit Corporation, USDA

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with §1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by

(5) If not previously provided, the debtor’s right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor’s right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in §1403.9(e);

(9) CCC’s intent, if applicable, under §1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC’s intent, if applicable, under §1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government’s interest, written demand may be preceded by other appropriate actions.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the rate of interest in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with §1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC;

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute; and

(5) IRS Notices of Levy which shall be honored in accordance with IRS statutes and regulations.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action
Commodity Credit Corporation, USDA

§ 1403.7

to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(c) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1–3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC’s ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate FSA State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving
(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate FSA office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at §1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government’s best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor or by CCC shall be paid to an assignee unless there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with part 1404 of this Chapter by execution of Form CCC–36 shall be subject to offset for any debt owed to CCC or FSA without regard to the date of assignment was accepted by CCC or FSA.

(n) Amounts recovered by offset for CCC and FSA debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor’s pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CCC.

(2) When CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the
amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in §1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or FSA program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

(b) Notwithstanding the provisions of paragraph (a) of this section and §1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity date or, in the case of a non-recourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC’s intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement;

(iii) Notified of the right to pursue an administrative appeal in accordance with part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse of recourse loan made in accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral, as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

§1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil fraud statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.
(c) Except for debts due CCC or FSA, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

[54 FR 52878, Dec. 22, 1989]

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term “full amount of the delinquent debt” means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department’s current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accrue and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on a portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed.
Commodity Credit Corporation, USDA

§ 1403.13 Contact with debtor’s employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 451...
§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor’s request as provided under another statute or regulation before:

(a) Effecting administrative offset;
(b) Referring the debt to private collection or credit reporting agencies;
(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or
(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;
(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;
(3) When a debt or part thereof is compromised and paid, the amount of such compromise;
(4) When collection of a debt by administrative offset is barred in accordance with §1403.7(b)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.
(2) The delinquent debt is owed by an individual who:
   (i) Is declared legally insane or incompetent;
   (ii) Possessed of no assets or other means of payment; and
   (iii) Possessed of no reasonable prospects of being able to pay the debt in the future.
(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to §1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to §1403.4, of CCC’s intent to make such a report. Such notification shall include:

(1) CCC’s intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.
(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.
(3) The debtor’s right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.
(4) The debtor’s right to review of this action in accordance with paragraph (i) of this section.
(d) The debtor shall be notified, in writing at the debtor’s last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial
change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:
(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;
(2) The amount, status, and history of the claim; and
(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with §1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under §1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:
(1) The debt has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or
(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

(l) Notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.


§1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.
§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099-G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government’s ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with §1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC’s collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

§ 1403.21 Collection of 1988 and 1989 advance deficiency overpayments.

(a) The provisions of this section set forth the policies and procedures for collection of 1988 and 1989 advance deficiency overpayments (“overpayments”).

(b) The following definition shall be applicable to this section:

Financial hardship means that condition of a producer in which payment of the debt by lump sum would jeopardize the producer’s ability to provide food, shelter, and medical care to his immediate family, or to continue the producer’s farming operation, as determined by CCC.

(c) This section applies to collection of overpayments from those producers who are suffering financial hardship, as determined by CCC, and who also meet the following conditions, as determined by CCC:

(1) Who received an advance deficiency payment for the 1988 or 1989 crop of a commodity under part 1413 of this chapter;

(2) Who are required to provide a refund of at least $1,500 of such payment, as a result of the increase in market prices of the commodity;

(3) Who reside in a county, or in a county that is contiguous to a county where CCC has determined that farming, ranching, or aquaculture operations have been substantially affected as evidenced by a reduction in normal production for the county of at least 30 percent during two of the three crop years 1988, 1989, and 1990 by:

(i) A natural disaster designated by the Secretary of Agriculture;

(ii) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(4) Where the total quantity of the 1988 or 1989 crop of the commodity that the producers were able to harvest is less than the result of multiplying 65 percent of the farm payment yield established CCC for the crop by the sum of the acreage planted for the harvest and the acreage prevented from being planted (because of the disaster or emergency referred to in paragraph (c)(3) of this section) for the crop; and

(5) Who have applied to the County Farm Service Agency Office which issued the advance deficiency payment, no later than May 31, 1991, for a determination of eligibility for the repayment provisions of this section.

(d) CCC shall assess interest on delinquent debts for 1988 or 1989 overpayments as follows:

(1) CCC shall establish a regional annual interest rate for each of 12 geographic regions, corresponding to the extent practicable, as determined by CCC, with the 12 geographic districts of the Farm Credit System.

(2) Each regional annual interest rate shall not exceed the average of the interest rates charged by Farm Credit System institutions within the region to high-risk borrowers on 1-year operating loans, as determined by CCC based upon information provided to CCC by the Farm Credit System.

(3) Interest shall accrue at the established regional annual interest rate for the region in which the debt arose, beginning November 28, 1990.
Commodity Credit Corporation, USDA § 1404.4

(e) CCC shall not offset, in each of the crop years 1990, 1991, and 1992, more than 1/3 of the farm program payments otherwise due a producer, as a result of the producer's delinquency in repaying the overpayment.

(f) CCC shall permit producers to repay the overpayment in three equal installments during each of the crop years 1990, 1991, and 1992, if the producers document to CCC that they have entered into agreements to obtain multiperil crop insurance policies for the 1991 and 1992 crop years.

[56 FR 32319, July 16, 1991]

PART 1404—ASSIGNMENT OF PAYMENTS

§ 1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Farm Service Agency (FSA) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) Assignee means any person, including any agency of the Federal Government, to whom an assignment of an FSA or CCC payment is made in accordance with this part.

(2) Assignor means any person who is the recipient of a payment from FSA or CCC who assigns the payment to another person in accordance with this part.

(3) Payment means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(ii) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by FSA or CCC, any payment due a person from FSA or CCC may be assigned.


§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any FSA or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or FSA programs and contracts.

(2)(i) To be recognized by FSA or CCC, Form CCC–36 must be filed in the county FSA office prior to the time the county committee approves the making of the payment covered by the assignment. Form CCC–36 must be filed with the FSA or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee.

(b) [Reserved]

§ 1404.5 [Reserved]

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, FSA, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA without regard to the date of filing of a Form CCC–36 with the applicable FSA or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA if such indebtedness was entered on the debt record of the applicable FSA or CCC office prior to the date of filing of Forms CCC–251 and 252 with the applicable FSA or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or FSA which was entered on the debt record of the applicable FSA or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and FSA or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of the Form CCC–36 or Forms CCC–251 and 252 with the appropriate FSA or CCC office.

§ 1404.7 Misrepresentations.

If FSA or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, FSA or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, FSA or CCC finds that any material misrepresentation was in fact made, FSA or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns FSA, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

Sec.
§ 1405.1 Interest.
§ 1405.2 Basic rule of fractions.
§ 1405.3 Effect of changes in regulations.
§ 1405.4 Delegations of authority.
§ 1405.5 Notice and comment.
§ 1405.6 Crop insurance requirement.
§ 1405.7 Uruguay Round Agreements Act.
§ 1405.8 Disqualification due to crop insurance violation.
§ 1405.9 Commodity assessments.


SOURCE: 61 FR 37575, July 18, 1996, unless otherwise noted.

§ 1405.1 Interest.

(a) Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC the rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by
§ 1405.7 Uruguay Round Agreements Act.

In the event the outlays by the United States for domestic support measures will exceed, in any required reporting period, the allowable levels under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act), CCC will, as determined by the Secretary of Agriculture, reduce the amount of payments and benefits to be made in any such reporting period, and/or collect a refund of payments or benefits previously made with respect to such reporting period, under parts 1412, 1413, 1421, 1427, 1430, 1434 and 1435 of this chapter in order to ensure that the level of domestic support provided by the United States complies with the
§ 1405.8 Disqualification due to crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides any 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.
5. The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 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 CCC that a producer has been found to have committed a violation of which paragraph (a) of this section applies, that person shall be considered ineligible for payments under the programs specified in paragraph (a) of this section that are funded by CCC 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 eligbility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

§ 1405.9 Commodity assessments.

(a) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise required to be remitted to a State agency under a State statute by the producer of the commodity pledged as collateral for such loan or by the first purchaser of such commodity subject to the requirements of paragraph (b) of this section.

1. The assessment will be collected in one of the following ways, as requested by the State, but not both:
   (i) When the proceeds of the loan are disbursed; or
   (ii) When the commodity pledged as collateral for the loan is forfeited to CCC, in which case CCC will collect from the producer the amount of the assessment submitted by CCC to the State.

2. CCC will collect commodity assessments authorized under a State statute when:
   (1) The State entity has:
      (i) Requested that the assessment be collected;
      (ii) Identified whether the assessment is to be collected at the time the loan proceeds are disbursed or at the time the commodity is forfeited to CCC;
      (iii) Identified the person who may enter into an agreement with CCC that sets forth the obligations of the State and CCC with respect to the collection of the assessment; and
(iv) Provided an opinion from the Office of the Attorney General to CCC that concludes the person signing the agreement may obligate the State to comply with the agreement and the provisions of Public Law 108–470 have been met.

(2) The agreement described in paragraph (c) of this section has been executed by the appropriate State official and CCC.

(c) CCC will enter into an agreement with an authorized State official to collect commodity assessments when the actions set forth in paragraphs (b)(1) and (2) of this section have been completed. Such agreement will contain the obligations and responsibilities of the State and CCC. All such agreements will include provisions that provide:

(1) The State will indemnify CCC for any costs incurred in the collection of the assessment including costs incurred with respect to resolution of disputes arising from the requested collection of the assessment but not for administrative costs incurred by CCC in the collection of the assessment;

(2) The State, in cases where an assessment has been collected two or more times with respect to the same quantity of the commodity subject to the assessment, will refund the amount of the excess collection to the producer.

(3) The agreement may be terminated by either party upon 30 days notice.

(4) The State, in cases where the marketing assistance loan is made by a cooperative marketing association or a designated marketing association approved by CCC, or any other similar entity that is approved by CCC, to obtain such a loan on behalf of its members may enter into individual arrangements with such entity to facilitate the collection of the assessment with the approval of CCC.


PART 1407—DEBARMENT AND SUSPENSION

§ 1407.1 Purpose.

This part specifies the policies that CCC will follow in taking action to debar or suspend individuals or firms from participation in Federal nonprocurement and procurement activities.

§ 1407.2 Nonprocurement debarment and suspension.

(a) CCC will proceed under 7 CFR part 3017 when taking action to debar or suspend participants or potential participants in CCC’s nonprocurement activities.

(b) The debarring and suspending official for nonprocurement actions taken by CCC shall be as follows: For actions initiated on behalf of CCC by the Foreign Agricultural Service (FAS), the Food and Nutrition Service (FNS), or the Agricultural Marketing Service (AMS), the debarring and suspending official will be the Vice President, CCC, who is the Administrator FAS, FNS, or AMS, respectively. For actions initiated on behalf of CCC by the Natural Resources Conservation Service (NRCS), the official will be the Vice President, CCC, who is the Chief, NRCS.

§ 1407.3 Procurement debarment and suspension.

CCC will proceed under this part when taking action to debar or suspend contractors with CCC or participants or potential participants in CCC’s procurement activities. CCC will apply the provisions of 48 CFR part 409, subpart 409.4, in such actions, with the exception that the debarring and suspending official will be the Executive Vice President, CCC, or a designee.

PART 1409—MEETINGS OF THE BOARD OF DIRECTORS OF COMMODITY CREDIT CORPORATION

§ 1409.1 General statement.

§ 1409.2 Definitions.

§ 1409.3 Open meetings.
§ 1409.1

1409.4 Exemptions.
1409.5 Closure of meetings.
1409.6 Notices to the public.
1409.7 Records retention.
1409.8 Public inspection and copying of records; applicable fees.
1409.9 Report to Congress.


SOURCE: 42 FR 14673, Mar. 16, 1977, unless otherwise noted.

§ 1409.1 General statement.

(a) It is the policy of Commodity Credit Corporation, under the provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b) to make available to the public, to the fullest extent practicable, information regarding the decision process of the Board of Directors of Commodity Credit Corporation.

(b) This part sets forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of Commodity Credit Corporation in carrying out its responsibilities under the statutes administered by Commodity Credit Corporation.

§ 1409.2 Definitions.

(a) The term Board means the Board of Directors of Commodity Credit Corporation.

(b) The term Director means an individual who is a member of the Board of Directors of Commodity Credit Corporation and includes the Secretary of Agriculture, who is by statute an ex-officio director and Chairman of the Board.

(c) The term General Counsel means the General Counsel or the Assistant General Counsel of Commodity Credit Corporation.

(d) The term meeting means the deliberations of at least five (quorum) Directors of the Board of Directors of Commodity Credit Corporation where such deliberations determine or result in the joint conduct or disposition of official Board business but shall not include deliberations for:

(1) Closing a portion or portions of a meeting or series of meetings as provided in §1409.3 (a) and (b) of this part, or

(2) Calling a meeting at a date earlier than announced as provided in paragraph 1409.6(a)(2) of this part; or

(3) Changing the subject matter of a publicly announced meeting as provided in §1409.6(b) of this part; or

(4) Determining whether or not to withhold from disclosure information pertaining to a meeting or portions of a meeting or series of meetings as provided in §1409.5(b) of this part.

(e) The term public observation means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by Commodity Credit Corporation.

§ 1409.3 Open meetings.

Every portion of every meeting of the Board of Directors will be open to public observation except as provided in §§1409.4 and 1409.5 of this part.

§ 1409.4 Exemptions.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by §1409.3 of this part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to—

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
   (i) Interfere with enforcement proceedings,
   (ii) Deprive a person of a right to a fair trial or to an impartial adjudication,
   (iii) Constitute an unwarranted invasion of personal privacy, or
   (iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
   (v) Disclose investigative techniques and procedures, or
   (vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to: (i) Lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution; or
   (ii) Significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern Commodity Credit Corporation’s participation in a civil action or proceedings.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) Procedure for closing a majority of the meetings. (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of § 1409.4(a) of this part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in § 1409.4(a) of this part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and § 1409.6, except § 1409.6(e), of this part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) Procedure for closing other meetings.

(1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in § 1409.4(a) of this part. The vote of each Director will be recorded and no proxy shall be allowed.
(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in §1409.4(a) of this part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public or with respect to the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in §1409.4(a) of this part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of §1409.4(a) of this part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) General counsel's certification. Before every Board meeting closed on the basis of one or more of the exemptions in §1409.4(a) of this part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§1409.6 Notices to the public.

(a)(1) The Secretary of the Board will make a public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) subject matter of the meeting, except to the extent that such information is exempt from disclosure under §1409.4(a) of this part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors determine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b)(1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full written explanation of the Board's action in closing the portion of portions of the meeting or series of meetings, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(c) The time or place of a board meeting may be changed following the public announcement as required by paragraph (a)(1) of this section only if (i) five Directors determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible and (ii) the Board publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(d) The subject matter of a Board meeting or the determination of the Board to open or close a meeting or portions thereof to the public, may be changed following the public announcement as required by paragraph (a)(1) of this section only if the Board publicly announces such change or changes at the earliest practicable time.

(e) The Secretary of the Board shall use all reasonable means to keep the
public promptly and fully informed of public announcements including the use of a bulletin board outside the office of the Secretary of the Board at the address indicated in §1409.8(b) of this part. Requests for information concerning Board meetings should be addressed to the Secretary of the Board.

(f) Immediately following each public announcement required by this section, the information provided in such public announcement will be submitted for publication in the FEDERAL REGISTER.

§ 1409.8 Public inspection and copying of records; applicable fees.

(a) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, or any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the Secretary of the Board determines to contain information which may be withheld on the basis of one or more of the exemptions in §1409.4(a) of this part.

(b) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Secretary of the Board of Directors of Commodity Credit Corporation, Room 218-W, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

(c) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

§ 1409.9 Report to Congress.

The Secretary of Agriculture will annually report to the Congress regarding the Board’s compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the
Sunshine Act, including any costs assessed against Commodity Credit Corporation in such litigation.
SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

EDITORIAL NOTE: For Federal Register citations to regulations affecting previous program years not included in this volume, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.
1410.1 Administration.
1410.2 Definitions.
1410.3 General description.
1410.4 Maximum county acreage.
1410.5 Eligible persons.
1410.6 Eligible land.
1410.7 Duration of contracts.
1410.8 Conservation priority areas.
1410.9 Conversion to trees.
1410.10 Restoration of wetlands.
1410.11 Farmable Wetlands Program.
1410.12 Emergency Forestry Program.
1410.13–1410.19 [Reserved]
1410.20 Obligations of participant.
1410.21 Obligations of the Commodity Credit Corporation.
1410.22 CRP Conservation Plan.
1410.23 Eligible practices.
1410.24–1410.29 [Reserved]
1410.30 Signup.
1410.31 Acceptability of offers.
1410.32 CRP contract.
1410.33 Contract modifications.
1410.34–1410.39 [Reserved]
1410.40 Cost-share payments.
1410.41 Levels and rates for cost-share payments.
1410.42 Annual rental payments.
1410.43 Method of payment.
1410.44 Average adjusted gross income.
1410.45–1410.49 [Reserved]
1410.50 Enhancement programs.
1410.51 Transfer of land.
1410.52 Violations.
1410.53 Executed CRP contract not in conformity with regulations.
1410.54 Performance based upon advice or action of the Department.
1410.55 Access to land under contract.
1410.56 Division of payments and provisions about tenants and sharecroppers.
1410.57 Payments not subject to claims.
1410.58 Assignments.
1410.59 Appeals.
1410.60 Scheme or device.
1410.61 Filing of false claims.
1410.62 Miscellaneous.
1410.63 Permissive uses.
1410.64 Transition Incentives Program.


SOURCE: 68 FR 24835, May 8, 2003, unless otherwise noted.

§ 1410.1 Administration.

(a) The regulations in this part will be implemented under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA. In the field, the regulations in this part will be implemented by the FSA State and county committees (“State committees” and “county committees,” respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

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

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

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

(d) No delegation of authority herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

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

(f) Notwithstanding other provisions of this section, the Erodibility Index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by CCC, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case shall such determination compel CCC to execute a contract that CCC does not believe will serve the purposes of the program established by this part. Any approved technical authority shall utilize CRP guidelines established by CCC.

(g) CCC may consult with the Forest Service (FS), a State forestry agency, or other organizations as determined by CCC to be necessary for developing and implementing conservation plans that include tree planting as the appropriate practice or as a component of a practice.

(h) CCC may consult with the National Institute of Food and Agriculture (NIFA) to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(i) CCC may consult with the National Marine Fishery Service, U.S. Fish and Wildlife Service (FWS), or State wildlife agencies for such assistance as is determined necessary by CCC to implement the CRP.

(j) Except as agreed by CCC and the participant together:

(1) The regulations in this part and others governing CRP as of September 30, 2008, will continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR parts 1200 to 1599 revised as of January 1, 2008); and

(2) Except as specified in paragraph (j)(1) of this section, this part will apply to all CRP contracts.

Commodity Credit Corporation, USDA

§ 1410.2

unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means an area designated with actual and adverse water quality, wildlife habitat, air quality, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Conserving use means a use of land with any rotation requirements as may be specified by the Deputy Administrator: for alfalfa and other multi-year grasses and legumes planted during 2002 through 2007; as summer fallow during 2002 through 2007; and in which the land was previously enrolled in the program (for which the contract expired during the period 2002 through 2007) and where the grass cover required by the CRP contract continues to be maintained as though still enrolled. Where the land use for a year qualifies as a “conserving use” under this definition, then, the land for that year shall, for purposes of eligibility under §1410.6(a)(1) be considered to have been planted to an “agricultural commodity.”

Considered planted means: land devoted to a conserving use or land enrolled in the WBP during the crop year or during any of the 2 years preceding the crop year if the contract expired; cropland enrolled in CRP; or land for which the producer received insurance indemnity payment for prevented planting.

Contour grass strip means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

Contract period means the term of the contract which is not less than 10, nor more than 15 years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the CRP Program Manager, or a designee.

Erodibility Index (EI) is, as prescribed by CCC, used to determine the inherent erodibility (water or wind) of a soil.

Farmed wetlands means land defined as farmed wetlands in part 12 of this title.

Federally-owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or crop-lines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and/or living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, that are designated as such in a conservation plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

Filter strip means a strip or area of vegetation adjacent to a body of water the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a
width determined appropriate for the purpose by the Deputy Administrator.

Highly Erodible Land (HEL) means land determined to have an EI equal to or greater than 8 on the acreage offered.

Infeasible to farm means an area that is too small or isolated to be economically farmed, as determined by the Deputy Administrator.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Landlord means a person who rents or leases acreage to another person.

Limited resource farmer or rancher means:

(1) A person with direct or indirect gross farm sales of not more than $155,200 in each of the previous two calendar years preceding the year of enrollment (adjusted for inflation using Prices Paid by Farmer Index as compiled by the USDA National Agricultural Statistics Service), and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using U.S. Department of Commerce data).

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Merchantable timber means timber grown for commercial purposes on private non-industrial forest land on which the average tree has a trunk diameter of at least 6 inches measured at a point no less than 4.5 feet above the ground.

Offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner’s or operator’s request to participate in the CRP.

Offeror means an eligible person as determined by CCC who submits an offer of eligible acreage for enrollment into the CRP to enter into a CRP contract.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Perennial crop means a crop that is produced from the same root structure for two or more years, as determined by CCC.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees with a life span of 10 or more years.

Permanent wildlife habitat means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns for the life of the contract.

Pollinator means an insect or other animal that carries pollen from one flower to another.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and specifications as a part of a conservation management system.

Present value means the value of a stream of future payments discounted by 5 percent in accordance with Office of Management and Budget Circular A–94 (revised January 2006), Discount Rates To Be Used in Evaluating Time-Distributed Costs and Benefits.

Private non-industrial forest land means, for purposes of §1410.12, lands with existing tree cover that are owned by a private non-industrial forest landowner and which were damaged by hurricanes occurring in calendar year 2005.

Private non-industrial forest landowner means, for purposes of §1410.12, an individual, group, association, corporation, Indian Tribe, other legal private entity, or State School Trust, 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. Corporations whose stocks are publicly traded or owners or lessees principally engaged in the primary processing of raw wood products are excluded from this definition. An owner of land leased to a lessee shall also be excluded who should be excluded under the previous sentence.

*Retired or retiring owner or operator* means an owner or operator of land enrolled in a CRP contract who has ended active labor in farming operations as a producer of agricultural crops or expects to do so within 5 years of the CRP contract modification.

*Riparian buffer* means a strip or area of vegetation adjacent to a river or stream of sufficient width as determined by the Deputy Administrator to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

1. American Indians or Alaskan Natives
2. Asians or Asian-Americans
3. Blacks or African Americans
4. Hispanics, and
5. Native Hawaiians or other Pacific Islanders.

*Soil loss tolerance (T)* means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long-term productivity of the soil.

*State* means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

*State school trust land* means land owned by a State with the explicit purpose of supporting public schools.

*State Technical Committee* means a committee established pursuant to part 610 of this chapter to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

*State water quality priority areas* means any area so designated by the State committee, in consultation with the State Technical Committee, where agricultural pollutants contribute to water degradation or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

*Technical assistance* means assistance in regard to determining the eligibility of land and practices, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with CRP to owners or operators, as approved by CCC, includes technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and, technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.
Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share, incentive, or annual contract payments.

Water Bank Program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use during the contract period in return for financial and technical assistance.

(b) A participant must obtain and adhere to a conservation plan prepared in accordance with CRP guidelines, as established and determined by CCC. A conservation plan for eligible acreage must be obtained by a participant and must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan, in which case the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation’s long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, such as, but not limited to, tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payments under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section, the maximum acreage that may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county; further, no more than 10 percent of the cropland may be subject, in the aggregate, to a CRP or WRP easement.

(b) The restrictions in paragraph (a) of this section may be waived by CCC as follows:

(1) If CCC determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title; or

(2) Cropland in a county enrolled under continuous signup provisions as
Commodity Credit Corporation, USDA § 1410.6

specified in §1410.30 or §1410.50 may be excluded from the restrictions in paragraph (a) of this section, as determined by CCC, provided that the county government concurs.

(c) These restrictions on participation shall be in addition to any other restriction imposed by law.


§ 1410.5 Eligible persons.

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

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

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

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

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

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by §1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months before submitting the offer.

(c) The provisions of this section do not apply to beginning or socially disadvantaged farmers or ranchers who are eligible participants in the Transition Incentives Program as specified in §1410.64.


§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land must be one of the following:

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in §1410.2, to an agricultural commodity in 4 of the 6 crop years from 2002 through 2007, as determined by the CCC, provided further that field margins that are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the CCC; and is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the CCC; or

(2) Marginal pasture land, as determined by the CCC, that:

(i) Is determined to be suitable for use as a riparian buffer or is made eligible in a CREP for similar water quality purposes as determined by the CCC. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by CCC, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees, are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, as determined appropriate by the CCC, of substantially reducing sediment and/or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody or for water quality purposes; or

(ii) [Reserved]

(3) Must be acreage enrolled in the CRP during the final year of the CRP contract provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the CCC.
§ 1410.6 7 CFR Ch. XIV (1–1–14 Edition)

(b) Land qualifying under paragraphs (a)(1) or (a)(2) of this section must also meet one of the following criteria, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use, as determined by the CCC, as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as determined by the CCC, land devoted to vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by CCC:
   (i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland; excluding such areas as gullies or sod waterways; and
   (ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody;

(2) Be a field that has evidence of scour erosion caused by out-of-bank flows of water, as determined by CCC:
   (i) In addition, such land must:
      (A) Be expected to flood a minimum of once every 10 years; and
      (B) Have evidence of scour erosion as a result of such flooding.
   (ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:
      (A) The size of the field is 9 acres or less; or
      (B) More than one third of the cropland in the field is land that lies between the water source and the inland limit of the scour erosion.
   (iii) Or, if the full field is not eligible for enrollment under this paragraph, be the cropland between the waterbody and inland limit of the scour erosion together with, as determined by the CCC, additional areas that would otherwise be unmanageable and would be isolated by the eligible areas.
   (iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with the Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG;

(3) Be cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer as determined by CCC;

(4) Be cropland in a portion of a field not enrolled in the CRP, if more than 50 percent of the remainder of the field is enrolled as a buffer practice, if the portion of the field not enrolled in the CRP will be enrolled as part of the buffer practice, and if as determined by CCC:
   (i) The remainder of the field is infeasible to farm; and
   (ii) The remainder of the field is enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate;

(5) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(6) Be devoted to certain covers, as determined by the CCC, that are established and maintained according to the FOTG, provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the CCC;

(7) Be non-irrigated or irrigated cropland that produces or serves as the recharge area, as determined by the CCC, for saline seeps, or acreage that is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface;

(8) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the field;

(9) Be within a public wellhead protection area;

(10) Be within a designated conservation priority area;

(11) Be designated as a cropped wetland and appropriate associated acreage, as determined by the CCC;
Commodity Credit Corporation, USDA

§ 1410.9

(12) Be cropland that, as determined by the CCC, is associated with non-cropped wetlands and would provide significant environmental benefits; or

(13) Notwithstanding paragraph (a)(1) of this section, be cropland devoted to a perennial crop, as determined by CCC; such cropland will only be eligible for continuous signup practices authorized by §1410.30 and CREP practices authorized by §1410.50(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the CCC, land is:

(1) Federally-owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities during any part of the contract term except for eligible land under paragraph (a)(2) of this section, as determined by CCC; or

(3) Land already enrolled in the CRP unless authorized by §1410.6(a)(3), as determined by the CCC.


§ 1410.7 Duration of contracts.

(a) Except as provided in paragraphs (b) or (c) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under §1410.10, the participant may specify the duration of the contract between 10 years and 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) Subject to CCC review, State PSA committees, in consultation with NRCS and the State Technical Committee, may designate conservation priority areas within guidelines established by the Deputy Administrator. Such designation must clearly define conservation and environmental objectives and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, shall not total more than 33 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by the Deputy Administrator.

(c) As determined by the Deputy Administrator, a region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality, air quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless re-designated, except they may be withdrawn:

(1) At the request of the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, cropland is considered eligible for enrollment according §1410.6(b)(10) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Conversion to trees.

An owner or operator who has entered into a CRP contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, that is devoted to permanent vegetative cover, from such cover to hardwood trees, including alley cropping and riparian buffers.
§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been received for wetland restoration on the same land. In addition to the cost-share limitation in § 1410.41, an additional one-time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program (FWP) within the overall Conservation Reserve Program provided for in this part.

(b) As determined by CCC, eligible owners and operators may enroll land in FWP provided that the land:

(1) Is a wetland, including a converted wetland, that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2, in 3 of the 10 most recent crop years and that does not exceed the size limitations of this section;

(2) Is enrolled to be a constructed wetland that is to be developed to receive flow from a row crop agriculture drainage system and is designed to provide nitrogen removal in addition to other wetland functions and that does not exceed the size limitations of this section;

(3) Was a commercial pond-raised aquaculture facility in any year during the period of calendar years 2002 through 2007; or

(4) Was cropped, after January 1, 1990, and before December 31, 2002, at least 3 of 10 crop years, was subject to the natural overflow of a prairie wetland, and does not exceed the size limitations of this section.

(c) In addition, land may be enrolled in FWP if the land is buffer acreage that provides protection for and is contiguous to land otherwise eligible under paragraphs (b)(1), (b)(2), or (b)(4) of this section, subject to other provisions of this section.

(d) Total enrollment in CRP under this section may not exceed 1 million acres. In addition, the maximum size of a land enrolled under this section may not exceed, as determined by CCC:

(1) 40 contiguous acres for land made eligible by paragraph (b)(1) of this section;
Commodity Credit Corporation, USDA § 1410.12

(2) 40 contiguous acres for land made eligible by paragraph (b)(2) of this section;

(3) 20 contiguous acres for land made eligible by paragraph (b)(4) of this section; or

(4) A suitable buffer as determined by the Deputy Administrator for lands added under paragraph (c) of this section.

(e) All participants subject to a CRP contract under this section must agree to establish and maintain, as appropriate, the practice described in paragraph (b) of this section to the maximum extent possible, as determined by CCC, in accordance with NRCS FOTG including, as appropriate, restoring the hydrology of the wetland and establishing vegetative cover (which may include emerging vegetation in water and bottomland hardwoods, cypress, and other appropriate tree species in shallow water areas), as determined by CCC.

(f) Offers for contracts under this section must be submitted under continuous signup provisions as authorized in §1410.30.

(g) Except as otherwise determined by CCC, all other requirements of this part apply to enrollments under this section, and CCC may add such other requirements or conditions as it deems necessary. Such additional conditions include, but are not limited to, payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

[74 FR 30912, June 29, 2009]

§ 1410.12 Emergency Forestry Program.

(a) In addition to other allowable enrollments, certain non-industrial private forest land located in Presidential- or Secretarial-declared primary disaster counties that suffered damage from hurricanes in calendar year 2005 may be enrolled through the Emergency Forestry Conservation Reserve Program (EFCRP) provided for in this section.

(b) Owners and/or operators may enroll non-industrial private forest land, as defined in §1410.2, in the CRP provided that the private non-industrial forest land:

(1) Has merchantable timber (timber on land on which the average tree has a trunk diameter of at least six inches measured at a point no less than four and one-half feet above the ground); and

(2) Has experienced a loss of 35 percent or more of merchantable timber in a 2005 calendar year hurricane-affected county due to 2005 hurricanes.

(c) The provisions of §1410.4 do not apply to this section.

(d) Any overall acreage enrollment limit imposed on CRP shall not apply to acreage enrolled under this section.

(e) All participants subject to a CRP contract entered into pursuant to this section must agree:

(1) To restore the land, through site preparation and planting of, to the maximum extent practicable, native species or similar species as existing prior to hurricane damages as may be specified in the contract, and comply with other requirements as may be specified in the contract;

(2) To establish temporary vegetative cover; and

(3) That the contract term shall be for a period of 10 years, during which time standing timber may not be harvested from the enrolled land except as may be approved by CCC in the conservation plan as part of the normal maintenance of the forest land.

(f) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in §1410.30.

(g) In evaluating contract offers to which this section applies, different factors, as determined by CCC, may be considered for priority purposes. These include but are not limited to soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss.

(h) In return for a contract entered into under this paragraph, a participant may opt for:

(1) Annual rental payments authorized by §1410.42, except that the payment rate shall be equal to:

(i) The average rental rate for CRP contracts in the county in which the land is actually located; or

(ii) In the case where no CRP contracts are enrolled in a county, the average rental rate will be the CRP rate
applicable to a nearby similarly-situated county.

(2) In lieu of the annual payments provided for in paragraph (h)(1) of this section, lump sum payment equal to the present value of the total amount of annual rental payments that would otherwise be paid under paragraph (h)(1) of this section.

(i) Cost-share assistance authorized under §1410.40 may be reduced by the value of salvaged timber or timber products which are removed to prepare the site for replanting.

(j) The provisions of §1410.7(c), which concern enrollment limits, do not apply to contracts to which this section applies.

(k) To avoid duplicate payments, participants under this section are not eligible to receive EFCRP funding for land on which the participant has or will receive funding under any other program that covers the same expenses.

(l) All other requirements of this part shall apply to enrollments under this section.

[71 FR 31917, June 2, 2006]

§§ 1410.13–1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

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

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant’s control, and CCC agrees to a modified plan. However, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if, as determined by the Deputy Administrator:

(i) The failure to plant or establish such cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the contract on which the participant could practically plant or establish such cover is planted or established to such cover; and

(iii) The land on which the participant was unable to plant or establish such cover is planted or established to such cover after the wet or drought conditions that prevented the planting or establishment subside;

(3) Establish temporary vegetative cover either when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4) Comply with part 12 of this title; (5) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the contract period;

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

(8) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as necessary or may be specified in the CRP conservation plan and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(9) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants in compliance with the provisions of such contract and the provisions of this part and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the CRP contract and this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:
Commodity Credit Corporation, USDA § 1410.31

(a) Share up to 50 percent of the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment, including applicable incentive payments, in such amounts as may be specified in the CRP contract.

§ 1410.22 CRP conservation plan.

(a) The producer shall obtain a CRP conservation plan that complies with CCC guidelines and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the CRP conservation plan, or disapproves the conservation plan, such approval may be waived by CCC.

(b) The practices and management activities included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable. The producer must undertake management activities on the land as needed throughout the term of the CRP contract to implement the conservation plan.

(c) If applicable, a tree planting plan shall be developed and included in the CRP conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the CRP conservation plan shall address the goals included in the conservation priority area designation authorized under §1410.8.

(e) All CRP conservation plans and revisions of such plans shall be subject to the approval of CCC.

(f) Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation such as light discing and burning as determined by the Deputy Administrator.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

1. Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

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

3. Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising aquiculture for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems necessary. Generally, continuous signup is limited to those offers that would otherwise rank highly under §1410.31(b) and may include high priority practices such as filter strips, riparian buffers, shelterbelts, field windbreaks, and living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, and practices to benefit certain approved public wellhead protection areas.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit offers for the amounts they are willing to accept as rental payments to
§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the producer must enter into a contract with CCC.

(b) The CRP contract is comprised of:

1. The terms and conditions for participation in the CRP;
2. The CRP conservation plan; and
3. Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in §1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The producer shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

1. The producer; and
2. The owners of the cropland to be placed in the CRP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

1. The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;
2. The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;
3. The participant is not in compliance with the terms and conditions of the contract;
4. Acreage is enrolled in another Federal, State or local conservation program;
5. The CRP practice fails or is not established after a certain time period, as determined by the Deputy Administrator, and the cost of restoring the...
practice outweighs the benefits received from the restoration;
(6) The CRP contract was approved based on erroneous eligibility determinations; or
(7) CCC determines that such a termination is needed in the public interest.

(g) (1) Contracts for land enrolled in CRP before January 1, 1995, that have been continuously in effect may be unilaterally terminated by all CRP participants on a contract except for contract acreage:
(i) Located within a certain distance determined appropriate by the applicable FOTG of a perennial stream, or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;
(ii) On which a CRP easement is filed;
(iii) That is considered to be a wetland by USDA according to part 12 of this title;
(iv) Located within a wellhead protection area;
(v) That is subject to frequent flooding, as determined by the Deputy Administrator;
(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or
(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:
(A) Grass waterways;
(B) Filter strips;
(C) Shallow water areas for wildlife;
(D) Bottom land timber established on wetlands;
(E) Field windbreaks; and
(F) Shelterbelts;
(2) With respect to terminations under this paragraph:
(i) Any land for which an early termination is sought by the participant must have an EI of 15 or less;
(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant’s desire to terminate the contract;
(iii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and
(iv) Participants must meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.
(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.
(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:
(1) Decrease acreage in the CRP;
(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;
(3) Facilitate the practical administration of the CRP;
(4) During the final year of the CRP contract’s term, facilitate a transition of land subject to the contract from a retired or retiring owner or operator to a beginning or socially-disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods; provided that for this purpose “sustainable grazing and crop production methods” will be considered, as determined by the Deputy Administrator, to be methods that would be designed as part of an overall plan defined on an ecosystem level to be useful in the creation of integrated systems of plant and animal production practices that have a site specific application that would:
(i) Meet human needs for food and fiber;
(ii) Enhance the environment and the natural resource base;
(iii) Use nonrenewable resources efficiently; and
(iv) Sustain the economic viability of farming operation;
or
(5) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when, as determined by the Deputy Administrator:
(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or
(2) The installed measure deteriorated because of conditions beyond the control of the participant; and
(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§§ 1410.34–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under §1410.9(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:
(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads; and
(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant’s actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount that, when added to such assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

(g) CCC may make cost-share payments for thinning of existing tree stands to benefit wildlife habitat and other resource conditions on enrolled land, as determined by CCC.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan. CCC may allow cost-share payments for maintenance costs, consistent with the provisions of §1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) Except as otherwise provided, a participant may, in addition to any
Commodity Credit Corporation, USDA

§ 1410.44 Average adjusted gross income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds $1,000,000 or as further specified in part 1400 subpart F of this chapter.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) Annual rental payments, except for land accepted that was formerly enrolled under the WBP, include a payment based on a weighted average soil rental rate or marginal pastureland rental rate, as appropriate, and an incentive payment as a portion of the annual payment of certain practices, as determined by the Deputy Administrator. Payments for land accepted that was formerly enrolled under the WBP are limited to annual rental payments received under the WBP.

(c) The annual rental payment shall be divided among the participants on a single contract as agreed to in such contract.

(d) The maximum amount of rental payments that a person or legal entity may receive, directly or indirectly, under CRP for any fiscal year must not exceed $50,000. The regulations in part 1400 of this chapter will be applicable for determining whether the limit has been exceeded.

(e) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, shall indicate, when appropriate, that:

(1) Offers of contracts by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts submitted under continuous signup authorized at §1410.30 may be accepted without further evaluation when the requested rental rate is less than or equal to the calculated weighted soil rental rate, based on the three predominant soils listed; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under §1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(g) Additional financial incentives may be provided to producers who offer contracts expected to provide especially high environmental benefits, as determined by the Deputy Administrator.

[68 FR 24835, May 8, 2003, as amended at 74 FR 30912, June 29, 2009]

§ 1410.43 Method of payment.

Except as provided in §1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44 Average adjusted gross income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds $1,000,000 or as further specified in part 1400 subpart F of this chapter.
(b) The limit specified in paragraph (a) of this section may be waived as specified in part 1400 subpart F of this chapter.

[74 FR 30912, June 29, 2009]

§§ 1410.45–1410.49 [Reserved]

§ 1410.50 Enhancement programs.

(a) For contracts to which a State, political subdivision, or agency thereof, has succeeded in connection with an approved conservation reserve state enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof that has been approved for that purpose by CCC.

(b) CCC may enter into other conservation reserve enhancement program agreements in accordance with terms deemed appropriate by CCC, with a State, political subdivision, or agency thereof, to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant in the new CRP contract for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations of the CRP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the past or present participant who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in §1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days, or such other time as the Deputy Administrator determines to be appropriate, of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Shall refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator. The provisions of §1410.32(h) shall apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the contract participants, such operator may, as permitted by CCC, continue to receive payments under such contract if:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such
Commodity Credit Corporation, USDA

§ 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part shall be divided as specified in the applicable contract and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment that is equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person’s eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract.
period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a party to contract.

§ 1410.57 Payments not subject to claims.
Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.
Participants may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.
(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for the Deputy Administrator may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.
(a) If CCC determines that a person has employed a scheme or device to defeat the purposes of this part, or any part, of any program, payment otherwise due or paid such person during the applicable period may be required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

c(1) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.
If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due to the participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil, that may apply.

§ 1410.62 Miscellaneous.
(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part shall be paid to the participant’s successor(s) under part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.
§ 1410.63 Permissive uses.
(a) Unless otherwise specified by the Deputy Administrator, no uses of any kind are authorized on designated CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:
(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;
(2) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves;
(3) CRP cover is maintained according to the conservation plan and
(4) No barrier fencing or boundary limitations exist that prohibit wildlife access to or from the CRP acreage unless required by State law.

(c) The following activities may be permitted, as determined by CCC, on CRP enrolled land insofar as they are consistent with the conservation purposes of the program including timing, frequency, and duration as provided in an approved CRP conservation plan that identifies appropriate vegetative management requirements:
(1) Managed harvesting, including harvest of biomass, but only in exchange for a payment reduction as determined by CCC and in accordance with harvest frequency and timing of harvesting activities outside the official nesting and broodrearing season only as identified in an approved CRP conservation plan;
(2) Routine grazing, but only in exchange for a payment reduction as determined by CCC and in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the official nesting and broodrearing season only as identified in an approved CRP conservation plan;
(3) Prescribed grazing to control invasive species, but only in exchange for a payment reduction as determined by CCC and in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the official nesting and broodrearing season only as identified in an approved CRP conservation plan;
(4) Cropland enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the definition in part 718 of this title.

(d) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information, not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity, as determined by the Deputy Administrator.

(e) As determined by CCC, incentives may be authorized to foster opportunities for Indian tribes and beginning, limited resource, and socially disadvantaged farmers and ranchers and to enhance long-term environmental goals.

(f) As determined by CCC, consistent with the purposes of CRP, the development of habitat for, and use of conservation practices for, native and managed pollinators may be authorized.
for a payment reduction as determined by CCC and in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the official nesting and broodrearing season only as identified in an approved CRP conservation plan;

(4) Harvesting, grazing, or other commercial use of the forage on the land in response to a drought or other emergency, but only in exchange for a payment reduction as determined by CCC;

(5) Wind turbines on CRP land installed in numbers and locations as determined appropriate by CCC considering the location, size, and other physical characteristics of the land, the extent to which the land contains wildlife and wildlife habitat, and the purposes of CRP, but only in exchange for a payment reduction as determined by CCC;

(6) Spot grazing, if necessary for control of weed infestation, and not to exceed a 30-day period according to an approved conservation plan, but only in exchange for a payment reduction as determined by CCC;

(7) Forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use, but only in accordance with a conservation plan, and only in exchange for a payment reduction as determined by CCC; and

(8) The sale of carbon, water quality, or other environmental credits, as determined appropriate by CCC.


§ 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, the retired or retiring owner or operator must, except as specified in paragraph (f) of this section:

(1) Have land that is expiring under an existing CRP contract with a 50 percent or greater interest as provided at §1410.42(c);

(2) Sell or lease (under a qualifying nonrevocable lease of at least 5 years in length) expiring CRP land to a beginning or socially disadvantaged farmer or rancher who will return some or all of the land to production using sustainable grazing or crop production methods;

(3) Modify the CRP contract in accordance with §1410.33(a)(4);

(4) Allow the beginning or socially disadvantaged farmer or rancher to begin the organic certification process under the Organic Foods Production Act of 1990 during the last year of the contract, if requested by that farmer or rancher;

(5) Allow the beginning or socially disadvantaged farmer or rancher to develop a conservation plan for the land; and

(6) Allow the beginning or socially disadvantaged farmer or rancher to install conservation practices and initiate land improvements that are consistent with the conservation plan during the last year of the contract.

(b) To be eligible for participation in the Transition Incentives Program, the beginning or socially disadvantaged farmers or ranchers must:

(1) Certify that they meet the definition in §1410.2 of either a beginning farmer or rancher or a socially disadvantaged farmer or rancher;

(2) Obtain and implement a conservation plan; and

(3) Implement sustainable grazing or crop production in compliance with the conservation plan by the time specified in the plan.

(c) Eligible beginning or socially disadvantaged farmers or ranchers will be eligible to enroll land in the Conservation Stewardship Program or the Environmental Quality Incentives Program, as specified in parts 1470 and 1466 of this chapter, provided that their offer to enroll otherwise meets all program conditions, and provided that the CRP
contract of the retired or retiring owner or operator has expired and the beginning or socially disadvantaged farmer or rancher has sufficient control of the property.

(e) As an incentive for selling or leasing land to a beginning or socially disadvantaged farmer or rancher who is not a family member, CCC will pay 2 years of additional CRP annual rental payments at the same contract rate to a retired or retiring owner or operator. The retired or retiring owner or operator must certify that the beginning or socially disadvantaged farmer or rancher is not a family member.

(f) Subject to all other program conditions, incentive payments may be allowed for contracts that have already expired if:

(1) The contract expired on or after June 18, 2008, and contract modification began on or before September 30, 2010;

(2) The transfer to the beginning or socially disadvantaged farmer or rancher will occur after the contract modification; and

(3) All other program conditions are otherwise met.

(g) Eligible retired or retiring owner or operator and eligible beginning or socially disadvantaged farmer or rancher must agree to be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other Transition Incentive Program agreement participants in compliance with the provisions of such Transition Incentive Program agreement and the provisions of this part and for any payment adjustments that may be required for violations of any of the terms or conditions of the Transition Incentive Program agreement and this part.

[75 FR 27169, May 14, 2010]
Subpart E—Financial Considerations Including Sharing Payments

1412.51 Limitation of payments.
1412.52 Direct payment provisions.
1412.53 Counter-cyclical payment provisions.
1412.54 Sharing of contract payments.
1412.55 Provisions relating to tenants and sharecroppers.

Subpart F—Contract Violations and Reduction in Payments

1412.61 Contract violations.
1412.62 Fruit, vegetable and wild rice acreage reporting violations.
1412.63 Contract liability.
1412.64 Inaccurate representation, misrepresentation, and scheme or device.
1412.65 Offsets and assignments.
1412.66 Acreage and production reports.
1412.67 Notices of loss.
1412.68 Compliance with highly erodible land and wetland conservation provisions.
1412.69 Controlled substance violations.

Subpart G—Average Crop Revenue Election (ACRE) Program

1412.71 Administration.
1412.72 Availability and election of alternative approach.
1412.73 Sharing of ACRE payments.
1412.74 Prior Enrollment in DCP.
1412.75 Notice of election.
1412.76 Payments.
1412.77 Transfer of land and succession-in-interest.
1412.78 Violations.
1412.79 Executed ACRE contract not in conformity with regulations.
1412.80 Division of program payments and provisions relating to tenants and sharecroppers.


Source: 73 FR 79289, Dec. 29, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 1412.1 Applicability, statutory changes, interest, and contract provisions.

This part governs: How base acres and farm program payment yields are established or adjusted for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, rice, peanuts, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other designated oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2008 through 2012; the month when producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program contracts with CCC for each of the years 2008 through 2012, as applicable; and the peanut crop acreage bases and yields in order to receive 2008 through 2012 direct and counter-cyclical payments. Payments otherwise provided for in this part are subject to changes made by statute in rates, conditions, and eligibility notwithstanding any contract made under this part. However, any such modification may, as determined by the Deputy Administrator, allow producers the opportunity to withdraw from the contract. Also, if any refund comes due to CCC under this part, interest will be due from the date of the CCC disbursement except as determined by the Deputy Administrator. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant must comply with the regulations in this part and any additional requirements imposed by the program contract.

§ 1412.2 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in
Commodity Credit Corporation, USDA

§ 1412.3 Definitions.

The definitions set forth in this section are applicable for all purposes of administering the DCP. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions set forth in this section.

Where there is a conflict or a difference in definitions specified in this part and those that apply to the Average Crop Revenue Election (ACRE) program specified in subpart G of this part, the regulations of subpart G of this part will apply to the ACRE program.

ACRE guarantee price means the simple average, as determined by CCC, of the national average market prices of the covered commodity or peanuts for the most recent two crop years preceding the relevant current crop year. For example, for the 2009 program the relevant crop year is the 2009 crop year. Therefore, for the 2009 program, the ACRE guarantee price for the covered commodity or peanuts is equal to the simple average of the national average market prices of the covered commodity or peanuts for the 2007 and 2008 crops.

ACRE plug yield means the resulting yield determined by taking the applicable NASS county average yield for the covered commodity or peanuts, by practice if applicable, and multiplying it by 95 percent. The ACRE plug yield may be used by a farm in establishing an initial benchmark farm yield or reporting actual production in accordance with instructions issued by the Deputy Administrator. The ACRE plug yield is also used on a farm for a covered commodity or peanuts in a year where there are no acres of the covered commodity or peanuts planted. The ACRE plug yield may be found on the FSA Web site at: http://www.fsa.usda.gov/dcp/ by clicking “ACRE County Yields.” ACRE plug yields are used in benchmark farm yields. If the National Agricultural Statistical Service (NASS) data is not available for a particular practice of a covered commodity or peanuts from which an ACRE plug yield can be established, the Deputy Administrator may establish an ACRE plug yield for the practice of the covered commodity or peanuts based a computation of multiplying 95 percent times the yield determined based on production data available from FSA farm records in the county, or in the event sufficient records do not exist, another data source determined appropriate by the Deputy Administrator.
ACRE price means the higher of the following, as determined by CCC, for the covered commodity or peanuts:

1. The national average price received by producers during the 12-month marketing year (as defined in this part) for the relevant current crop of the covered commodity or peanuts (the relevant current crop for a program year is the corresponding crop for commodity for that year—for example, the current crop for the 2009 program is the 2009 crop), or

2. 70 percent of the marketing assistance loan rate for the relevant current crop of the commodity under 7 U.S.C. 8731–8757.

Actual farm production means all of a farm’s harvested and appraised production, including grazed acres, of a covered commodity or peanuts. Appraisals must be performed by appraisers acceptable to FSA. Appraisals performed according to the Non-Insured Crop Disaster Assistance Program (NAP) or crop insurance guidelines are generally deemed acceptable to FSA for DCP and ACRE Program purposes.

Actual farm revenue means the per acre amount computed by multiplying the actual farm yield, which is a per acre amount, of a covered commodity or peanuts times the ACRE price for the relevant current crop year.

Actual farm yield means for the relevant current crop year, the per acre amount determined by dividing the actual farm production of a covered commodity or peanuts by the farm’s total planted and considered planted acres of the covered commodity or peanuts.

Actual State yield means the State’s per acre amount for the relevant current crop year for a commodity determined by dividing the actual production in the State of the covered commodity or peanuts by the total planted acres of the covered commodity or peanuts in the State.

Actual State revenue means the per acre amount for a covered commodity or peanuts determined for the relevant current crop year by multiplying the actual State yield by the covered commodity or peanuts times the ACRE price.

Average Crop Revenue Election (ACRE) means the program authorized by section 1105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8715) according to subpart G of this part. Participation in the ACRE program requires a two-step process by the producer, specifically step 1 an election according to subpart G of this part followed by step 2 enrollment according to this part.

Average yield per planted acre means the actual farm production of a covered commodity or peanuts for a year divided by the farm’s planted acres.

Base acres means the number of acres established with respect to a covered commodity and peanuts on a farm pursuant to sections 1191 and 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007, subject to any adjustment in accordance with subpart B of this part.

Benchmark farm yield means, except as otherwise provided, a per acre yield for a covered commodity or peanuts computed using the Olympic average of the average yield per planted acre for the farm for the commodity for the 5 most recent crop years. The term “Olympic average” means that the highest and lowest per acre yields for the 5 years will be eliminated and the remaining annual entries will be averaged. CCC may make such adjustments as it deems necessary to create a fair yield for the farm so as to ensure the integrity of the ACRE Program. For purposes of determining a benchmark farm yield, yields on planted acres only will be considered except to the extent that the farm does not have a sufficient history to make a fair yield determination in which case a yield may be assigned by CCC.

Benchmark State yield means for a covered commodity or peanuts a per acre yield computed using the Olympic average of the average yield per planted acre for the State for the commodity for the 5 most recent crop
Commodity Credit Corporation, USDA

§ 1412.3

years. To the extent practicable, it will be calculated using data from NASB. The benchmark State yield is used in determining the State ACRE guarantee. CCC may make such adjustments in these yields as it deems necessary to provide for a fair yield and to ensure the integrity of the program.

Commercial agricultural production means the propagation and raising of agricultural products for commercial sale or barter having gross receipts or sales annually in excess of $1,000. The term includes pastures and land devoted to approved conserving uses.

Considered planted means acreage approved as prevented planted in accordance with § 718.103 of this title or the acreage considered planted to a covered commodity pursuant to § 1412.48.

Contract means the CCC-approved standard, uniform forms and appendices specified by CCC that constitute the agreement for participation in the Direct and Counter-Cyclical Program or ACRE program, as applicable.

Contract period means the compliance period set out for the contract for the particular program year. The program year is designated in item 1 of the contract. Contracts for different program years will be referenced by their program year. Thus, for example, a reference to the “2009 contract” means the contract for the 2009 program year and the relevant current crop for a program year is the corresponding crop for that commodity. Therefore, the relevant current crop for the 2009 program is, with respect to a particular commodity, the 2009 crop. References to the “contract” period refer to the compliance period for the particular program year. The compliance periods for the various program years are as follows:

(1) For the 2009 contract (and therefore for the 2009 program), the period that begins on October 1, 2008 and ends on September 30, 2009;
(2) For the 2010 contract, the period that begins on October 1, 2009 and ends on September 30, 2010;
(3) For the 2011 contract, the period that begins on October 1, 2010 and ends on September 30, 2011;
(4) For the 2012 contract, the period that begins on October 1, 2011 and ends on September 30, 2012.

Contract year means the particular year of the particular contract based on the compliance period for the contract. The compliance year will run from October 1 to the following September 30 and will have the same name as the corresponding fiscal year. For example, the 2009 contract year will be October 1, 2008, through September 30, 2009, and that year will be considered, too, the 2009 crop year. The contract for the 2009 crop year will be considered the contract for the 2009 crop. The same references will apply to all other years.

Counter-cyclical payment means a payment made to eligible producers on a farm in accordance with subpart E of this part for covered commodities and peanuts.

Covered commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, long grain rice, medium grain rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other oilseeds as determined by the Secretary.

Crop year means the relevant contract year. For example, the 2009 crop year is the year that runs from October 1, 2008, through September 30, 2009, and references to payments for that year refer to payments made under contracts with the compliance year that runs during those dates.

DCP cropland means DCP cropland as defined in part 718 of this title.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Developed means:

(1) Land has been approved by the local government for uses other than commercial agricultural uses; and
(2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

Direct payment means a payment made to eligible producers on a farm for peanuts and covered commodities in accordance with subpart E of this part.

Double-cropping means for covered commodities and peanuts, notwithstanding the meaning in § 1412.47(c) for fruits and vegetables, the planting of a
covered commodity or peanuts for harvest in a crop year, in cycle with another covered commodity or peanuts on the same acres for harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by CCC (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping the covered commodities or peanuts, as determined by CCC, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of Subpart G of this part. Notwithstanding any of the provisions of §718.103, in those instances where the subsequently planted or approved prevented planted covered commodity or peanuts cannot be recognized as double-cropped acreage under this definition, the subsequently planted covered commodity or peanuts will not be considered planted or prevented planted for any purpose.

Dry peas means Austrian, wrinkled seed, yellow, Umatilla, and green, excluding peas grown for the fresh, canning, or frozen market.

Effective price means the price calculated by the Secretary in accordance with §1412.53 for covered commodities and peanuts to determine whether counter-cyclical payments are required to be made under that section for a crop year.

Excess base acres means the number of base acres of covered commodities and peanuts on the farm that exceed the farm’s total DCP cropland.

Farm ACRE guarantee means, for a crop year of a covered commodity or peanuts, the per acre producer-paid crop insurance premium (if any) added to the result of multiplying the benchmark farm yield, which is a per acre amount, times the ACRE guarantee price. The farm ACRE guarantee is used in determining whether a farm is eligible for ACRE payments for a covered commodity or peanuts.

Fiscal year means the year running from October 1 to the following September 30 and will be designated by the same calendar year in which it ends. For example, the 2009 fiscal year ends September 30, 2009.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in or on a truck or other conveyance or is consumed by livestock through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay, are considered harvested when in the bale, whether removed from the field or not.

Initial crop means acreage of a covered commodity or peanuts planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

Limited resource farmer means, as determined in accordance with §1412.51, a farmer or rancher who meets both of the following criteria:

1. The person did not have, counting both direct and indirect interests, total gross farm sales for all farms in which that person has an interest of not more than the triggering level in both of the two calendar years that precede the calendar year in which the contract year begins. The triggering level is an indexed number that was originally set at $100,000. Beginning in October 2004, that number has been adjusted for inflation using the Prices Paid by the Farmer Index compiled by NASS. The triggering level for the DCP or ACRE contract will be the indexed number (see http://www.lrftool.sc.egov.usda.gov/tool.asp) as adjusted for the fiscal year that begins on the first day of the contract period.

2. The person’s total household income is at or below the national poverty level for a family of 4 or less than 50 percent of county median household income in each of the two most recent calendar years ending before the end of the program year, as CCC determines using U.S. Commerce Department Data.

Marketing year means the 12-month period beginning in the calendar year.
the crop is normally harvested as follows:  
(1) Barley, oats, and wheat: June 1–May 31;  
(2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1–June 30;  
(3) Upland cotton, peanuts, and rice: August 1–July 31; and  
(4) Corn, grain sorghum, soybeans, sunflowers, safflower, crambe, sesame, and chickpeas: September 1–August 31.

Medium grain rice means medium and short grain rice.

Minimum and maximum guarantee means, with respect to the State ACRE guarantee for each of the 2010 through 2012 crop years, the adjusted amounts that assure that the State ACRE guarantee for a program year for a covered commodity or peanuts will not decrease or increase more than 10 percent from the announced State ACRE guarantee for the preceding program year.

National loan rate means the loan rate established as specified in §1421.9 of this chapter.

Oilseeds means a crop of soybeans, sunflower seed, rapeseed, canola, crambe, safflower, flaxseed, mustard seed, sesame seed, or, if determined and announced by CCC, another oilseed.

Payment acres means:  
(1) Except as provided for in paragraph (2) of this definition, 85 percent of the base acres of a covered commodity or peanuts on a farm in accordance with §1412.71 or subpart B of this part, as applicable, for which direct or counter-cyclical or ACRE payments are made.  
(2) For each of the 2009 through 2011 crop years, 83.3 percent of the base acres for a covered commodity or peanuts on a farm in accordance with §1412.71 or subpart B of this part, as applicable, for which direct or ACRE payments are made.

Payment yield means:  
(1) For peanuts, the yield established pursuant to section 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007.  
(2) For covered commodities, the yield established in accordance with subpart C of this part for a farm for a covered commodity.

(3) For designated oilseeds or pulse crops, the yield established in accordance with subpart C of this part for a farm for a crop of a designated oilseed and pulse crop.

Per acre producer-paid crop insurance premium means the insurance premiums paid by all producers of a farm for insurance on a covered commodity or peanuts, provided that at least some of the insured crop acreage is subject to a DCP contract and ACRE contract, divided by the total acres of the covered commodity or peanuts covered by the insurance; regardless of whether or not all of the acres insured are included on the farm’s reported acreage for other programs, or are subject to a DCP contract and ACRE contract. Fees for catastrophic risk protection plan of insurance coverage or noninsured crop disaster assistance program coverage are not per acre producer-paid crop insurance premiums. Example: Producers A, B, and C have an interest in barley on a farm and the farm is enrolled in ACRE. Producers A and B paid crop insurance premiums totaling $800 on 100 insured barley acres. Regardless of how many acres of barley are planted, the per acre producer-paid crop insurance premium for barley is equal to $8.

Planted acres for a State means for:  
(1) Corn, sorghum, barley, oats, and wheat, the sum of harvested acres in a State, as reported by NASS and the sum of failed acres in a State, as reported by producers to FSA.

(2) All other crops, the sum of planted acres in a State, as reported by NASS.

Planted and considered planted (P&CP) means, with respect to an acreage amount, the sum of the planted and prevented planted acres approved by the FSA county committee on the farm for a crop. For the purposes of this part, P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an approved double-cropping sequence. Replacement crop acreage is not included as P&CP.

Processing means with respect to uses of a crop, non-fresh intended uses of crops enrolled in the project referred to
in §1412.48 for crops being grown pursuant to a contract for canning, pickling, frozen, juice, dry edible bean or pea, or such other uses deemed by CCC not to be fresh intended uses of crops mentioned in §1412.48.

*Pulse crop* means dry peas, lentils, small chickpeas, and large chickpeas. Pulse crop bases will not generate direct payments and may only create counter-cyclical payments for the 2009 and subsequent crop years.

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planted acreage of a covered commodity or peanuts not in a recognized double-cropping sequence (as specified in this section). Replacement crops that are covered commodities or peanuts are not eligible for planted and considered planted credit under this part and cannot generate payments under this part.

*Reseeded or replanted crop* means the second planting of a covered commodity or peanut crop on the same acreage after the first planting of that same crop has failed.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

1. American Indians or Alaskan Natives,
2. Asians or Asian-Americans,
3. Blacks or African-Americans,
4. Hispanics or Hispanic-Americans, and
5. Native Hawaiians or other Pacific Islanders.

*State ACRE guarantee* means the per acre amount for the crop which is 90 percent of the benchmark State yield times the ACRE guarantee price, subject to the minimum and maximum guarantee specified in these regulations.

*Subdivided* means land has been approved or designated by the local government, or a unit thereof, for development or use as something other than commercial agricultural production or other non-agricultural use.

*Supportive and necessary contractual documents* means those documents including, but not limited to, those items substantiating the DCP contract such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by the Secretary.

*Target price* means, for peanuts, the price per ton; and for covered commodities, the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) used to determine the payment rate for counter-cyclical payments.

§ 1412.22 Failure to make pulse crop election.

If an owner fails to make an election for establishing pulse crop base acres on a farm by April 1, 2009, in accordance with §1412.21, that owner will be deemed to have made the election to determine all base acres for all covered commodities and peanuts on the farm as set forth in §1412.21.

§ 1412.23 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (b) and (c) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Farm Bill, Pub. L. 99–198) that expired, was voluntarily terminated, or was early released on or after September 30, 2007.

(b) The total base acreage on a farm must not exceed the limitation of §1412.24.

(c) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than June 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm may elect to receive either direct payments and counter-cyclical payments or ACRE payments, as applicable, with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

§ 1412.24 Limitation of total base acreage on a farm.

(a) The sum of the following must not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

1. The sum of all base acres established for the farm in accordance with this part, plus

2. Any cropland acreage on the farm enrolled in a Conservation Reserve
§ 1412.31 Direct payment yields for covered commodities, except pulse crops.

(a) The direct payment yield for each covered commodity, except pulse crops, will be the yield established for the commodity for the farm in accordance with the regulations for covered commodities at part 1412 of this chapter in effect on January 1, 2008 (7 CFR part 1412, revised as of January 1, 2008).

(b) [Reserved]

§ 1412.32 Direct payment yield for designated oilseed and pulse crops.

(a) The direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm will be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1983 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b) The yield per planted acre for such designated oilseed for which a yield was not established by September 30, 2007, and for pulse crops on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years will be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year will be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with §1412.34; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section will be based on:

(A) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator will assign a yield to be
Commodity Credit Corporation, USDA

§ 1412.33 Payment yield for counter-cyclical payments for covered commodities.

The counter-cyclical payment yield for covered commodities on the farm will be equal to the counter-cyclical payment yield established for the covered commodity on the farm that was effective September 30, 2007. Counter cyclical payment yields for designated oilseeds or eligible pulse crops for which direct payment yields were not established as of September 30, 2007, will be equal to the direct payment yield established in accordance with §§ 1412.32 or 1412.34, as applicable.

§ 1412.34 Submitting production evidence for establishing direct payment yields for oilseeds and pulse crops.

(a)(1) Reports of production evidence must be submitted when the owner elects to establish a direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm in accordance with §1412.32.

(2) Producer or third-party certification will not be accepted as proof of production evidence.

(3) Reports of production evidence for designated oilseeds for which a yield was not established by September 30, 2007, and for pulse crops must be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels, CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Settlement sheets;

(iv) Warehouse ledger sheets;

(v) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

(vi) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(vii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer’s name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The date of transaction or delivery, and

(v) The quantity.

(c) When production of a designated oilseed for which a yield was not established by September 30, 2007, and pulse crops has been disposed of through non-commercial channels, then 75 percent of the county average yield as determined in accordance with §1412.32(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

§ 1412.35 Incorrect or false production evidence of oilseeds and pulse crops.

(a) If production evidence submitted in accordance with §1412.34 is false or incorrect, as determined by the county committee, the county committee will determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took any action to defeat or undermine the purpose of the program, the county committee will:

(i) Require a refund of all direct and counter-cyclical payments earned for the farm for the first year such payments were made;

(ii) For designated oilseeds or pulse crops, reduce both the direct and counter-cyclical payment yields to 75
percent of the county average yield as determined in accordance with §1412.32(b)(4). That yield will then be reduced by the applicable direct payment yield factor in accordance with §1412.32(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, regarding the first year of payments, require a refund of an amount equal to the following for designated oilseeds or pulse crops for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to, any or all of the following:

(i) Make a further yield reduction for part or all of the designated oilseeds or pulse crops on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts unless the Deputy Administrator determines otherwise; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee will:

(1) Correct the counter-cyclical yield for the applicable covered commodity or peanuts to equal the yield that would have been calculated in accordance with §1412.33 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect, or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

Subpart D—Direct and Counter-Cyclical Program and ACRE Program Contract Terms and Enrollment Provisions for Covered Commodities and Peanuts 2008 Through 2012

§1412.41 Direct and counter-cyclical program contract or ACRE program contract.

(a) Except as specified in subpart G of this part, the following provisions apply to DCP and ACRE program contracts:

(1) With respect to fiscal year 2008 payments, CCC will, through the date announced by CCC, entertain offers for DCP contracts by eligible producers of covered commodities and peanuts. With respect to fiscal year 2009 payments, CCC will entertain offers by eligible producers for an annual DCP or ACRE program contract through August 14, 2009. With respect to fiscal years 2010 through 2012 payments, CCC will annually allow offers for a DCP or ACRE program contract by eligible producers on a farm having base acres with respect to a covered commodity or peanuts, through June 1 of each such fiscal year.

(2)(i) Eligible producers must execute and submit a DCP or ACRE program contract and furnish supportive and necessary contractual documents to the county FSA office where the records for the program farm are administratively maintained not later than August 14, 2009, for 2009 fiscal year contracts and not later than June 1 of the applicable year for 2010 through 2012 fiscal year contracts.
Commodity Credit Corporation, USDA

§ 1412.41

(ii) Except as may otherwise be provided in statute for 2008, enrollment is not allowed after September 30 of the fiscal year in which the direct and counter-cyclical payments or ACRE program payments are requested.

(3) Under no circumstances will enrollment be permitted except as specified in this section. Contracts will not be approved unless all producers sharing in contract acreage with more than a zero share have submitted all applicable contracts and documentation necessary to make such approval, as determined by the Deputy Administrator. For those producers with an interest but a zero share of contract acreage, the contract will not be approved before all producers have signed the contract or furnished supportive and necessary contractual documents (such as cash leases in lieu of signing for a zero share). A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the enrollment deadline will not be considered submitted to CCC for any purpose and will not be acted on or approved. Those contracts enrolled by a producer by the date specified in paragraph (a)(2)(i) of this section that were not signed by other producers according to this section will be deemed withdrawn and will not be approved. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(4) Eligible producers who elect to enter into a contract with CCC must enroll all base acres on the farm. Enrollment of fewer than all base acres on the farm is not allowed.

(b) Eligible producers may withdraw from a contract at any time by the enrollment date specified in paragraph (a)(2)(i) of this section provided all signatories to the contract, including CCC, agree to the withdrawal in writing. DCP contracts enrolled prior to the decision of producers on a farm to elect the ACRE option for a fiscal year are considered withdrawn as specified in §1412.72. Producers electing the ACRE option according to §1412.72(d) must subsequently decide whether or not to enroll the farm in an ACRE program contract in accordance with the rules of this part.

(c) All contracts expire on September 30 of the fiscal year of the contract unless:

1. Withdrawn in accordance with paragraph (b) of this section;

2. Terminated in accordance with paragraphs (d) or (e) of this section; or

3. Terminated at an earlier date by mutual consent of all parties, including CCC.

(d) A transfer or change in the interest of an owner or producer in the farm or in acreage on the farm subject to a contract will result in the termination of the contract and a refund of all direct and counter-cyclical and ACRE payments issued for the farm. The contract termination will be effective on the date of the transfer or change. Successors to the interest in the farm or crops on the farm subject to the contract may enroll the farm in a new contract and assume all obligations under the contract, only after all payments previously issued for the farm have been refunded to CCC.

(e) In the event a farm reconstitution is completed of a properly enrolled farm or farms in accordance with part 718 of this title, FSA will issue notices to the operator and owners of record on a farm that all producers with an interest in the base acres on the farm must sign a new DCP or ACRE program contract and provide supporting documentation such as leases and other contractual supportive documents not later than September 30 of the fiscal year direct and counter-cyclical or ACRE program payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. It is the responsibility of the operator and owners on a farm that producers with an interest in base acres are notified of the reconstitution and requirement for a new contract. If all producers have not signed the new contract by September 30, then no producers on the contract will be eligible for a direct or counter-cyclical payment or ACRE program payment for that farm for the year the contract was terminated.

§ 1412.42 Eligible producers.

(a) Producers eligible to enter into a contract are:
(1) An owner of a farm who assumes all or a part of the risk of producing a crop;
(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract;
(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring before September 30 of the year of the contract in which case the owner is not required to enter into the contract;
(4) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner must also enter into the same contract; or
(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, direct and counter-cyclical payments will not begin under the contract until the lease held by the tenant ends.

(b) A minor child will be eligible to enter into a contract only if 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.

(c) The owner of the farm may be considered the “producer” if there is no other producer, but the owner could have shared in the crop had a crop been produced, but only if the farm otherwise meets all the requirements for payment.

§ 1412.43 Reconstitutions.

Farms will only be reconstituted in accordance with part 718 of this title.

§ 1412.44 Notification of base acres.

The operator and owners of record of a farm will be notified in writing of the number of base acres eligible for enrollment in a contract, unless such operator or owners of record of a farm requests in writing not to be furnished with the notice. The operator and owners of record are responsible for notifying all other producers of a farm of the notice.

§ 1412.45 Reducing or terminating base acreage.

(a)(1) Subject to the limitation in paragraph (a)(2) of this section, a permanent reduction of all or a portion of a farm’s base acreage will be allowed when all owners of the farm execute and submit a written request for such reduction on a CCC-approved standard, uniform form designated by CCC to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm’s base acres to negate or reduce a program violation is not allowed.

(b) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acres on the farm will be reduced accordingly regardless of the submission of a request for such reduction.

(c) The base acres of covered commodities and peanuts on a farm will be proportionately reduced when it is determined that the land has been subdivided and developed for multiple residential units or other nonfarming uses if, in the judgment of the county committee, the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless either of the following applies:
(1) The producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use and such land has not been divided from the farm with a farm reconstitution performed according to part 718 of this title or
(2) A properly constituted or reconstituted farm contains sufficient land that has not yet been subdivided and developed for multiple residential units.
or other nonfarming uses, and the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use.


§ 1412.46 Succession-in-interest.

(a) A succession in interest to a DCP or ACRE program contract is required if there has been a change in the operation of a farm, such as:

(1) A sale of land;
(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners or changes who are partners;
(3) A foreclosure, bankruptcy, or involuntary loss of the farm;
(4) A change in producer shares to reflect changes in the producer’s share of the crop(s) that were originally approved on the contract; or
(5) An other change determined by the Deputy Administrator to be a succession that will not adversely affect nor defeat the purpose of the program.

(b) A succession in interest to the contract is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions specified in §1412.55; or
(2) Adversely affects or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to receive direct and counter-cyclical payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner of an enrolled farm must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title or
(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with §1412.41(d).

(f) The failure of the party eligible to succeed to the contract to do so will be considered a contract violation.

§ 1412.47 Planting flexibility.

(a) Any crop may be planted and harvested on base acreage on a farm, except as limited elsewhere in this section. Any crop may be planted on DCP cropland in excess of the base acreage on a farm.

(b) Base acreage may be hayed or grazed at any time.

(c) Planting perennial fruits, vegetables (except mung beans, and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract. Harvesting non-perennial fruits, vegetables (except mung beans and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables, and wild rice may be planted on base acreage of a farm enrolled in a contract, and non-perennial fruits, vegetables, and wild rice may be harvested on base acreage of a farm enrolled in a contract if:

(1) A producer double-crops fruits, vegetables, or wild rice with a covered commodity or peanuts in any region described in paragraph (e) of this section, in which case direct and counter-cyclical payments will not be reduced for the planting or harvesting of the fruit, vegetable, or wild rice;
(2) The farm has a history of planting fruits, vegetables, or wild rice, as determined by CCC, in which case the payment acres for the farm will be reduced on an acre-for-acre basis; or
(3) The producer has a history of planting a specific fruit, specific vegetable, or wild rice, as determined by
§ 1412.47

CCC, the producer may plant and harvest the specific fruit, specific vegetable, or wild rice for which the producer has a planting history, subject to the following:

(i) The acreage harvested must not exceed the simple average of the sum of acreage of the specific fruit, specific vegetable, or wild rice planted for harvest by the producer during the crop years 1991 through 1995 or 1998 through 2001, as designated by the producer, excluding any year in which the specific fruit, specific vegetable, or wild rice was not planted; and

(ii) The payment acres for the farm will be reduced on an acre-for-acre basis.

(e) Double-cropping for purposes of this section means planting for harvest fruits, vegetables, or wild rice on the same acres in cycle with a covered commodity or peanuts planted and harvested for peanuts, grain, or lint in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

Alabama

Alaska
None.

Arizona
Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

Arkansas

California
Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office
None.

Colorado
Otero.

Connecticut
None.

Delaware
All counties.

Florida
All counties except Monroe.

Georgia
All counties.

Hawaii
None.

Idaho
None.

Illinois
Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolph, St. Clair, Tazewell, Union, Vermilion, White, and Whiteside.

Indiana
Allen, Bartholomew, Daviess, Gibson, Hamilton, Jackson, Johnson, Knox, LaGrange, Lake, LaPorte, Madison, Marion, Martin, Miami, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.
Commodity Credit Corporation, USDA § 1412.47

Iowa
Kossuth, Mitchell, Palo Alto, and Winnebago.

Kansas
None.

Kentucky
Daviess.

Louisiana
Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

Maine
None.

Maryland
Baltimore, Calvert, Caroline, Carroll, Dorchester, Harford, Kent, Queen Anne’s, St. Mary’s, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts
None.

Michigan
None.

Minnesota
Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.

Mississippi
Adams, Calhoun, Carroll, Coahoma, Covington, DeSoto, George, Humphreys, Jefferson Davis, Lowndes, Madison, Marshall, Monroe, Montgomery, Prentiss and Rankin.

Missouri
Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Ripley, Scott, and Stoddard.

Montana
None.

Nebraska
None.

Nevada
None.

New Hampshire
None.

New Jersey
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

New Mexico
Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York
Cayuga, Genesee, Livingston, Monroe, Ontario, Orange, Orleans, Suffolk, Wayne, and Wyoming.

North Carolina

North Dakota
None.

Ohio
Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingum, Scioto, and Stark.
§ 1412.47

Oklahoma

Oregon
Morrow and Umatilla.

Pennsylvania
Adams, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Montour, Northumberland, Schuylkill, Snyder, Union, and York.

Puerto Rico
None.

Rhode Island
None.

South Carolina
All counties.

South Dakota
None.

Tennessee

Texas

Utah
None.

Vermont
None.

Virginia

Washington
Yakima.

West Virginia
None.

Wisconsin
Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth,
Commodity Credit Corporation, USDA

§ 1412.48


Wyoming

None.

(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity or peanuts with lowest direct payment amount per acre until the acreage reduction amount is satisfied. Producers may agree to adjust the acre reduction between covered commodities and peanuts on the farm, only to the extent the total acre reduction amount does not change for the farm, and all producers affected by the adjustment agree to the adjustment in writing.

(g) For the purposes of this part, fruits, vegetables, and wild rice planted on base acreage of a farm under a DCP or ACRE program contract:

1. Will be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the fruit, vegetable, or wild rice has been destroyed before harvest, as determined by the Deputy Administrator, or

2. Will not be considered as planted to a fruit, vegetable, or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by the Deputy Administrator, and a fee to cover the cost of a farm visit is paid by the producer, in accordance with part 718 of this title, to verify that the crop has not been harvested.

(h) Unless otherwise specifically included as a covered commodity in accordance with this part, fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and:

- Acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, fava, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoli flower, broccoli-cavalo, broccoli, brussel sprouts, cabbage, callang, calamito, calabaza, carambola (star fruit), calaboose, carob, carrots,
- cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries, elut, endive, escarole, etou, feijoas, figs, gai lian, gaiion, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chaj, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yacon, and yaq yang choy.

§ 1412.48 Planting Transferability Pilot Project.

(a) Notwithstanding §1412.47, for each of the 2009 and subsequent crop years, the Planting Transferability Pilot Project (Project) will permit, in accordance with the limitations and provisions of this section only, the planting of certain crops in certain States on base acres without violating the DCP or ACRE contract. Base acres on
§ 1412.48

farms participating in the Project will be reduced an acre (or portion thereof) for every acre (or portion thereof) planted in the Project, for the year in which the farm is participating in the Project.

(b) Producers interested in participating in the Project must first be enrolled in either a DCP or ACRE program contract and submit an offer for participation in the Project accompanied by a copy of the contract mentioned in paragraph (f) of this section no later than March 1 of the fiscal year in which participation in the Project is desired. At the conclusion of the signup period, CCC will determine if it received more offers than the acreage limitation paragraph (e) of this section allows. If the offers exceed the acreage limitation in the State, CCC will conduct a lottery style selection process and approve offers for participation in the Project that will ensure that the number of base acres eligible for each year under the Project are not exceeded. In the event that CCC cannot approve an offer in its entirety, at CCC’s discretion, CCC may give the producers the opportunity to enroll less acres in the Project. CCC will also notify producers of the results via administrative appeal. Producers in each of the States mentioned in this section can elect to participate in the Project, the planting and production of a crop of a commodity specified in paragraph (d) of this section on base acres for which a temporary reduction was made under this section will be considered to be the same as the planting and production of the covered commodity or peanuts that was reduced.

(c) Signup for the Project will be conducted as announced by the Deputy Administrator.

(d) Under the Project, crops permitted on DCP base acres are cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes. These crops eligible for participation in this Project must be grown for processing.

(e) The States and the number of base acres eligible during each crop year for the Project under paragraph (a) of this section are:

(i) 9,000 acres in Illinois,
(ii) 9,000 acres in Indiana,
(iii) 1,000 acres in Iowa,
(iv) 9,000 acres in Michigan,
(v) 34,000 acres in Minnesota,
(vi) 4,000 acres in Ohio, and
(vii) 9,000 acres in Wisconsin.

(f) To be eligible to participate in the Project, producers on a farm must do all of the following for the commodity specified in paragraph (d) of this section:

(i) Enter into a contract to produce the commodity for processing;
(ii) Agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits;
(iii) Report acreage and production of the crop according to §1412.66 and provide evidence of disposition of the crop; and
(iv) File a notice of loss according to §1412.67, if the crop is either prevented from being planted or is impacted by disaster after planting.

(g) If base acres are recalculated while a farm is participating in this Project, the planting and production of a crop of a commodity specified in paragraph (d) of this section on base acres for which a temporary reduction was made under this section will be considered to be the same as the planting and production of the covered commodity or peanuts that was reduced.

(h) Reports will be prepared for Congress to periodically evaluate the supply and price of fresh and processed fruits and vegetables and evaluate if producers of fresh fruits and vegetables are being negatively impacted or existing production capacities are being supplanted.

(i) If DCP payments were issued prior to enrollment in this Project, the participants acknowledge that for the particular year of participation in the Project according to this section, DCP payments will be based on temporarily reduced base acres.

(j) In the event an ACRE program contract was approved either before or after enrollment in this Project according to this section, the ACRE program contract participants acknowledge that for the particular year of participation in the Project according to this section, ACRE payments will be
Commodity Credit Corporation, USDA § 1412.51

based on the temporarily reduced base acres.

§ 1412.49 Apportionment of long and medium grain rice.

(a) Rice base acres are established pursuant to section 1101 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) in effect on September 30, 2007, specified in §1412.3.

(b) Owners will designate the rice base acres in paragraph (a) of this section into two categories:
   (i) Long grain rice, and
   (ii) Medium grain rice. Medium grain rice includes short grain rice.

(c) Owners on a farm will elect rice base acres according to paragraph (b) of this section, based on the 4-year average of the percentages of:
   (i) Acreage planted on the farm to long grain rice and medium grain rice during the 2003 through 2006 crop years, plus
   (ii) Any acreage on the farm that producers were prevented from planting to long grain and medium grain rice during the 2003 through 2006 crop years because of drought, flood, other natural disaster, or other condition beyond the control of the producers.

(d) If long grain or medium grain rice was not planted on the farm in one or more years during the 2003 through 2006 crop years, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be substituted for the “not planted” years on the farm in paragraph (c) of this section.

(e) If an election is not made according to this section, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be used in determining the base acres required in paragraph (b) of this section for the farm.

(f) The purpose of this section is to determine long grain rice base and medium grain rice base on the farm. This section will not increase or decrease the:
   (i) Number of base acres on the farm;
   (ii) Number of payment acres on the farm; or
   (iii) Payment yield on the farm from that for rice under sections 1101 and 1102 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911, 7912), as in effect on September 30, 2007, subject to any adjustment required in this part.

§ 1412.50 Matters of general applicability.

These regulations and CCC’s interpretation of the regulations and internal agency directives issued to State and county FSA offices are matters of general applicability and are not individually appealable in administrative appeals according to §§11.3 and 780.5 of this title. Additionally, these rules and any decisions of CCC and FSA that are not based on facts derived from an individual participant’s application, contract, or file, including but not limited to, decisions of whether or not to conduct a lottery, lottery selection process and results, signup deadlines, direct payment rates, counter-cyclical payment rates, or any other generally applicable payment rate or rates, national average market prices, determinations of production of crops produced in a State or States, actual State yields, benchmark State yields, program guarantee price or prices, or determinations of CCC regarding the percentage of acreage of a crop in State that is irrigated or non-irrigated, or any other similar determination that is made by CCC or FSA for use in all similarly situated applications, are not appealable under part 11 or part 780 of this title. The only extent by which the matters referenced in this section, and like similar generally applicable matters, are reviewable administratively in an appeal forum is whether FSA’s or CCC’s decision to apply the generally applicable matter is factually accurate and in conformance with the regulations in this part.

Subpart E—Financial Considerations Including Sharing Payments

§ 1412.51 Limitation of payments.

(a) The provisions of part 1400 of this chapter apply to this part. Payments under this part will not exceed the amounts specified in part 1400 of this chapter. As determined under that part, no person may receive more than $40,000 in direct payments or $65,000 in counter-cyclical payments with respect
to any contract or crop year. For ACRE participants, no person may receive more than in ACRE and counter-cyclical payments and direct payments combined, more than the sum of:

(1) $65,000 and
(2) The amount of the reduction in direct payments required by the ACRE contract.

(b) The amount of 2008 direct and counter-cyclical payments for a farm will not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 22, 2008.

(c) Except as provided in this section, notwithstanding any other provision of this part, for the 2009 and subsequent crops, a producer on a farm will not receive direct payments, counter-cyclical payments, or ACRE payments if the sum of the base acres of covered commodities and peanuts on the farm is 10 acres or less. The 10-acre limitation of this subsection will not apply to a farm that is at least 50 percent owned by a socially disadvantaged farmer or rancher (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e))) or a limited resource farmer or rancher, as defined by the Secretary. If such farm is owned by a legal entity, such as a corporation, at least 50 percent of the ownership interest in the entity must be socially disadvantaged or limited resource farmers or ranchers.


§ 1412.52 Direct payment provisions.

(a) For 2008 through 2012 contracts, a final direct payment will be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) For 2008 through 2011 contracts, at the option of the producer, 22 percent of the direct payment for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established will be paid in any month from December through September of the fiscal year of the contract, as requested by the producer, as an advance direct payment. Advance direct payments are not available for the 2012 crop year. For any participant on the contract to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

(1) Be in compliance with all requirements of the contract and the requirements in this part at the time of the advance payment;
(2) Sign the DCP or ACRE program contract designating payment shares and provide supporting and necessary contractual documentation. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, the contract will not be considered approved and no contract participant will be eligible for any payment for that farm for that contract. FSA has no obligation or responsibility to obtain signatures or requisite documents for DCP or ACRE program contract participants; and
(3) Comply with the provisions of parts 12 and 1400 of this title.

(c) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer’s share of the direct payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof will not become available to or for any other producer and
(2) The producer must refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(d) The payment rates used to calculate direct payments with respect to covered commodities and peanuts on a farm enrolled in a contract are:

(1) Wheat—$0.52/bu.
(2) Corn—$0.28/bu.
(3) Grain sorghum—$0.35/bu.
(4) Barley—$0.24/bu.
(5) Oats—$0.024/bu.
(6) Upland cotton—$0.0667/lb.
(7) Long grain rice—$2.35/cwt.
(8) Medium grain rice—$2.33/cwt.
(9) Soybeans—$0.44/bu.
Commodity Credit Corporation, USDA § 1412.53

(10) Other oilseeds—$0.80/cwt.

(11) Peanuts—$36.00/ton.

(e) For 2008 through 2012 contracts, subject to the limitations of §1412.51 and part 1400 of this chapter, the final direct payment amount to be paid to participants on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

(1) The payment rate specified in paragraph (d) of this section, multiplied by

(2) The relevant payment acres of the covered commodity or peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with §1412.76(g), multiplied by

(3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with §§1412.31 and 1412.32, minus

(4) Any reduction calculated in accordance with subpart F of this part, minus

(5) Any advance payment received in accordance with paragraph (b) of this section.

(f)(1) The payment of any amount due any participant on a farm enrolled in a contract will be made only after all participants subject to the contract are determined to be in full compliance with the contract and the requirements of this part.

(2) A producer on a farm enrolled in a contract may receive a payment amount due without respect to the payment eligibility of other producers on the farm if all the following apply:

(i) The contract participant is in compliance with all contractual provisions;

(ii) The participant is in full compliance with the contract and the requirements in this part;

(iii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and

(iv) The payment is approved by the Deputy Administrator.

§ 1412.53 Counter-cyclical payment provisions.

(a) For the 2008 through 2012 contracts, except as provided in subpart G of this part, a counter-cyclical payment will be made to eligible participants on a farm enrolled in a DCP contract with respect to covered commodities and peanuts for which payment yields and base acres are established:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section and

(2) As soon as practical, as determined by the Deputy Administrator, after the end of the 12-month marketing year for the covered commodity or peanuts, as applicable.

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity or peanuts, respectively, is equal to the sum of the following:

(1) The higher of:

(A) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary, or

(B) The following rates:

(i) For the 2008 and 2009 crop years:

(A) Wheat—$2.75/bu.

(B) Corn—$1.95/bu.

(C) Grain sorghum—$1.95/bu.

(D) Barley—$1.85/bu.

(E) Oats—$1.33/bu.

(F) Upland cotton—$0.52/lb.

(G) Long grain rice—$6.50/cwt.

(H) Medium grain rice—$6.50/cwt.

(I) Soybeans—$5.00/bu.

(J) Other oilseeds—$9.30/cwt.

(K) Dry Peas—$5.40/cwt. (2009 crop only).

(L) Lentils—$11.28/cwt. (2009 crop only).

(M) Small Chickpeas—$7.43/cwt. (2009 crop only).

(N) Large Chickpeas—$11.28/cwt. (2009 crop only).

(O) Peanuts—$355.00/ton.

(ii) For the 2010 through 2012 crop years the following rates:

(A) Wheat—$2.94/bu.

(B) Corn—$1.95/bu.

(C) Grain sorghum—$1.95/bu.

(D) Barley—$1.85/bu.

(E) Oats—$1.39/bu.

(F) Upland cotton—$0.52/lb.
(G) Long grain rice—$6.50/cwt.
(H) Medium grain rice—$6.50/cwt.
(I) Soybeans—$5.00/bu.
(J) Other oilseeds—$10.09/cwt.
(K) Small Chickpeas—$7.43/cwt.
(L) Lentils—$11.28/cwt.
(M) Large Chickpeas—$11.28/cwt.
(O) Peanuts—$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in §1412.52(d).

(c) For the purposes of paragraphs (a) and (g) of this section, the target prices are as follows:

(1) For the 2008 and 2009 crop years (except as indicated):
   (i) Wheat—$3.92/bu.
   (ii) Corn—$2.63/bu.
   (iii) Grain sorghum—$2.57/bu.
   (iv) Barley—$2.24/bu.
   (v) Oats—$1.44/bu.
   (vi) Upland cotton—$0.7125/lb.
   (vii) Long grain rice—$10.50/cwt.
   (viii) Medium grain rice—$10.50/cwt.
   (ix) Soybeans—$5.80/bu.
   (x) Other oilseeds—$10.10/cwt.
   (xi) Peanuts—$495.00/ton.
   (xii) Dry peas—$8.32/cwt. (2009 crop only).
   (xv) Large chickpeas—$12.81/cwt. (2009 crop only).

(2) For each of the 2010 through 2012 crop years, the target prices are as follows:
   (i) Wheat—$4.17/bu.
   (ii) Corn—$2.63/bu.
   (iii) Grain sorghum—$2.63/bu.
   (iv) Barley—$2.63/bu.
   (v) Oats—$1.79/bu.
   (vi) Upland cotton—$0.7125/lb.
   (vii) Long grain rice—$10.50/cwt.
   (viii) Medium grain rice—$10.50/cwt.
   (ix) Soybeans—$6.00/bu.
   (x) Other oilseeds—$12.68/cwt.
   (xi) Peanuts—$495.00/ton
   (xii) Dry peas—$8.32/cwt.
   (xiii) Lentils—$12.81/cwt.
   (xiv) Small chickpeas—$10.36/cwt.
   (xv) Large chickpeas—$12.81/cwt.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

   (1) The target price of the covered commodity or peanuts as determined in accordance with paragraph (c) of this section, minus
   (2) The effective price of the covered commodity or peanuts as determined in accordance with paragraph (b) of this section.

(e) For 2008 through 2012 DCP contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with §1412.51 and part 1400 of this chapter, the final counter-cyclical payment amount to be paid to producers on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

   (1) The payment rate determined in accordance with paragraph (d) of this section, multiplied by
   (2) The relevant payment acres of the covered commodity or peanuts, as applicable, minus any acre reduction in accordance with §1412.47(g), multiplied by
   (3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with §1412.33, minus
   (4) Any reduction calculated in accordance with subpart F of this part that was not satisfied by a reduction in the direct payments for the farm calculated in accordance with §1412.52(e), minus
   (5) Any partial payment received in accordance with paragraphs (f) or (g) of this section.

(f) For 2008 through 2012 DCP contracts, partial counter-cyclical payments will be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts, respectively, will be required in accordance with paragraph (a)(1) of this section. The first partial counter-cyclical payment will:

   (1) Be calculated in accordance with paragraphs (e)(1) through (4) of this section;
   (2) Be an amount determined by the Secretary not to exceed 40 percent of the projected counter-cyclical payment.
§ 1412.54 Sharing of contract payments.

(a) Each eligible producer on a farm will be given the opportunity to annually enroll in a DCP or ACRE program contract, as applicable, and receive payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(b) Each producer leasing a farm must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease. An owner's or landlord's signature, as applicable, affirming a zero share on a contract may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by CCC. Such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the contract no later than as prescribed in §1412.41.

(c) When base acres are leased on a share basis, neither the landlord nor the tenant will receive 100 percent of the contract payment for the farm.

(d) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants, and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent either the provisions of this part or the provisions of part 1400 of this chapter.

(e) For the 2008 crop year only:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount or a fixed quantity of the
crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a share lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments. The leasing of grazing or haying privileges is not considered cash leasing.

(f) For the 2009 through 2012 crop years:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a cash lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct, counter-cyclical, and ACRE program payments. The leasing of grazing or haying privileges is not considered cash leasing.

§ 1412.61 Contract violations.

(a) Except as provided in paragraphs (b) and (c) of this section, violations of contract requirements will result in the termination of the contract. Upon such termination, all producers subject to the contract forfeit all rights to receive direct, counter-cyclical, and ACRE program payments on the farm for the contract and must refund all payments received, plus interest, to run from the date of the CCC disbursement, as determined in accordance with part 1403 of this chapter.

(b)(1) If there is a violation of §1412.47 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, payments may be made to the producers specified on the contract, but in an amount that is reduced by an amount equal to the sum of:

(i) The per-acre market value of the fruits, vegetables, and wild rice, as determined by the State Committee, times the number of acres in violation, plus

(ii) The direct, counter-cyclical, and ACRE program payments for each such acre.

(2) Producers must protect land enrolled in DCP from weeds, including noxious weeds, and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the total direct payments for the farm. The second violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three...
§ 1412.64 Inaccurate representation, misrepresentation, and scheme or device.

(a) Producers must report and certify program matters accurately. Errors in reporting may impact eligibility or extent of eligibility. Benefits under this part will be based on the most correct information available. Producers are responsible for refunding, with interest from the date of the CCC disbursement, any program benefits that were paid based on incorrect program information.

(b) For those cases in which FSA determines that an inaccurate representation or certification is a misrepresentation or scheme or device, producers will be ineligible to receive DCP or ACRE payments and will have the
§ 1412.65 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof 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 thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter apply to contract payments.

(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 chapter.

§ 1412.66 Acreage and production reports.

(a) As a condition of eligibility for payments under this part, the operator or owner must accurately submit a report of all cropland acreage on the farm in accordance with part 718 of this title.

(b) As a condition of eligibility for payments under this part, producers enrolled in the Project according to §1412.48 and those seeking payments under subpart G of this part, must accurately submit a report of production, no later than the acreage reporting date for the crop in the year immediately following the crop year of the reported crop acreage, for each crop either enrolled in the Project according to §1412.48 or for each covered commodity or peanuts on a farm enrolled in an ACRE program contract for which an acreage report greater than zero acres was filed according to paragraph (a) of this section. At the discretion of CCC, the report of production must include the date harvest was completed. Records of production acceptable to CCC may include those specified in:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries of the crop that was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the crop will be disposed of through retail sales, such as roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the crop acreage prior to harvest.


§ 1412.67 Notices of loss.

(a) If a notice of loss for prevented planting under a policy or plan of insurance or pursuant to part 1437 of this chapter has not already been filed, at least one producer having a share of a crop intended to be planted pursuant to §1412.48 or a having a share of a covered commodity or peanuts on a farm enrolled in the ACRE program must provide a notice of loss for prevented planting to CCC in the administrative FSA office for the farm, within 15 calendar days after the final planting date.

(b) For a prevented planting notice filed in accordance with this section, the notice of loss must include:
Commodity Credit Corporation, USDA

§ 1412.72 Availability and election of alternative approach.

(a) As an alternative to receiving counter-cyclical payments under §1412.53, and in exchange for a 20-percent reduction in direct payments under §1412.52, as well as 30-percent reduction in established marketing assistance loan rates with respect to all covered commodities and peanuts on a farm, during each of the 2009, 2010, 2011, and 2012 crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until August 14, 2009 to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the 2009 crop year through and including the 2012 crop year. During each of the 2010, 2011, and 2012, crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until June 1, or such earlier date as may be determined and announced at the discretion of the Deputy Administrator, of 2010, 2011, and 2012, as applicable, to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the initial crop year for which the election is made through and including the 2012 crop year.

(b) If producers elect the ACRE option for a farm in accordance with paragraphs (a) and (d) of this section, any DCP contract enrolled prior to a timely election in a fiscal year will be considered withdrawn according to §1412.41(b). The producers must still choose whether or not to enroll the ACRE elected farm in an ACRE program contract. DCP payments issued for the fiscal year of such election, including advance and partial program payments, must be refunded. No payments will be made available to participants under an ACRE program contract until such time as refunds have been remitted and enrollment has occurred as provided in this part, unless the Deputy Administrator determines to collect the refund instead by a setoff against the ACRE payment. Under no
§ 1412.72

circumstances will election be construed to be an intent to enroll or an enrollment in the ACRE program.

(c) If a marketing assistance loan (including marketing assistance loans that have been repaid or immediately repaid) or loan deficiency payment has been computed prior to election of the ACRE option, the persons electing the ACRE option:

(1) Acknowledge that such marketing assistance loan (including any loan repayments) and loan deficiency payments will be recomputed based on reduced marketing assistance loan rates,

(2) Agree to immediately refund to CCC the difference in the amount of marketing assistance loan (including loan repayments) and loan deficiency payments as a result of the ACRE election.

(d) Eligible producers, including owners, on a farm electing ACRE participation by:

(1) August 14, 2009, will be considered to have irrevocably elected the ACRE option for the 2009, 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2009 DCP contracts according to §1412.41(b);

(2) June 1 of:

(i) 2010, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2010 DCP contracts according to §1412.41(b);

(ii) 2011, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2011 and 2012 crop years and, if applicable, withdrew prior enrolled 2011 DCP contracts according to §1412.41(b);

(iii) 2012, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2012 crop year and, if applicable, withdrew prior enrolled 2012 DCP contracts according to §1412.41(b).

(e) If all of the producers on a farm fail to make an election under paragraphs (a) and (d), make different elections under paragraph (a), or fail to timely elect as required by paragraph (d), all of the producers on the farm will be deemed to have not made the ACRE election option and instead, provided DCP contract enrollment was previously made pursuant to this part, receive counter-cyclical payments under §1412.53 for all covered commodities and peanuts on the farm, and to otherwise not have made the election described in paragraph (a), for the applicable crop years.

(f) Eligible producers on a farm who elect the ACRE option according to this section are making the irrevocable election for all of the farm as constituted on the date of election irrespective of whether the same producers are present on the farm in subsequent years and irrespective of whether there is a change of ownership. That is, the producer election is binding on the farm, not just the producers on the farm at the time of the election. An election is for the entire farm and not for part of a farm. If the total number of planted and considered planted acres to all covered commodities and peanuts of the producers on the farm exceeds the total base acreage of the farm that is enrolled pursuant to this part, the producers on the farm may choose which commodity or commodities the ACRE option will apply to under this section. Although the election according to paragraph (b) of this section is irrevocable, for a farm enrolled as specified in this part, each year following the election by the final acreage reporting date for the crop the producers on a farm already having the ACRE option elected may choose the commodity or commodities the ACRE option will apply to under this section.

(g) “Timely elected” under this section means all requisite signatures of eligible producers on a farm are entered on the election form and accompanied by supportive and necessary contractual documents according to §1412.3.

(h) Unless an earlier date is determined and announced at the discretion of the Deputy Administrator, the election deadline for the ACRE option is August 14, 2009, for the 2009 election period and June 1 in each of the 2010, 2011, and 2012 fiscal years as specified in
§ 1412.72(d) and there is no late file election period. The enrollment deadlines specified in this part and §1412.41 apply to enrollments of farms under DCP contracts or ACRE program contracts.

For election of ACRE in a fiscal year, all requisite signatures and supportive documentary evidence must be furnished by August 14, 2009, for the 2009 election period and June 1 in each of the 2010, 2011, and 2012 fiscal years, or such earlier date determined and announced at the discretion of the Deputy Administrator. ACRE elections will not be construed to be ACRE contract enrollments. Participants must enroll in an ACRE contract to participate in ACRE following election.

(i) Under no circumstances will the ACRE election option be permitted except as provided in this section. ACRE elections will not be approved unless all producers, including owners, on a farm at time of election have signed the form electing the option. The ACRE election will not be approved before all producers, including owners, on a farm have signed the ACRE election form. A producer’s signature with other producers on a DCP contract enrolled prior to the submission of an election form will not be deemed evidence of the producer’s agreement with those other producers with regard to election. An election of the ACRE option not having all requisite signatures of producers on a farm by the election deadline of the year in which election is made will not be considered submitted to CCC for the purpose of election in that fiscal year and will not be acted on or approved. In all cases, it is the responsibility of the operator and owners of a farm to submit all requisite signatures necessary for election.

(j) Except as provided in paragraph (k) of this section, electing the ACRE option is irrevocable. Eligible producers may not withdraw an ACRE election option at any time. The provisions of §1412.41(b) do not apply to ACRE elections.

(k) Any producer with an interest in a farm having made the ACRE election according to this section may unilaterally revoke the election for all of the farm if the election and revocation are both filed by the producer prior to the election deadline established for the initial year of election. The revocation must be submitted in writing to CCC no later than close of business on the date of the election deadline of the initial year of election. There are no late file provisions available for revocation of the ACRE election. No other revocations of the ACRE election will be permitted under this part in order to comply with the irrevocability mandated in law. Accordingly, relief provisions in part 718, subpart D, of this title are not applicable to revocation of the ACRE election.

(l) In the event an ACRE election is revoked according to paragraph (k) of this section, the ACRE program contract, if enrolled, will be considered likewise withdrawn according to §1412.41(b) and any and all payments issued under such contract must be refunded according to part 1403 of this chapter.


§ 1412.73 Sharing of ACRE payments.

(a) Each eligible producer on a farm will be given the opportunity to elect the ACRE option and receive payments determined to be fair and equitable as agreed to by all producers on the farm and approved by the county committee.

(b) The provisions of §1412.54(f) regarding the classification of leases apply to ACRE.

(c) Shares of ACRE payments will be determined based on shares recorded on the report of acreage filed in accordance with §1412.66. Each eligible producer having a share of covered commodities or peanuts planted or considered planted on a farm enrolled under an ACRE program contract must do both of the following to be eligible for their share of an ACRE payment:

(1) Unless otherwise already enrolled on the ACRE program contract with a share of base acres on the farm, sign the ACRE program contract during the contract period.

(2) Have the producer’s share recorded on report of acreage filed in accordance with part 718 of this title and §1412.66 of this part.
§ 1412.74 Prior enrollment in DCP.

(a) If a farm was enrolled in a DCP contract according to subpart D of this part in a crop year prior to the time in which the producer elected the ACRE option according to §1412.72:

(1) The ACRE election option in such crop year will be considered a request to have the DCP contract withdrawn for that crop year. To participate in an annual ACRE program contract following election, the farm must be enrolled under an ACRE program contract by the producers according to this part. The election will in no way be construed by CCC to be an enrollment.

(2) All direct and counter-cyclical payments issued to any participant on that farm must be refunded to CCC.

(b) [Reserved]

§ 1412.75 Notice of Election.

(a) CCC will provide notice to operators and owners of record regarding the opportunity to make each of the elections described in §1412.72. The notice will include information:

(1) On the opportunity of the producers on a farm to make the election and

(2) Regarding the manner in which the election must be made and the time periods and manner in which notice of the election must be submitted to the CCC.

(b) CCC will provide the notice mentioned in paragraph (a) of this section to the operator and owners of record. The operator and owners are responsible for notifying all producers on the farm of the information contained in the notice.

§ 1412.76 Payments.

In the case of producers on a farm who make an election to receive ACRE payments for any of the 2009 through 2012 crop years for all covered commodities and peanuts and where enrollment according to this part has subsequently occurred, and where all other eligibility provisions have been satisfied, CCC will make ACRE payments available to the producers on a farm in accordance with this subpart. For each of the 2009 through 2012 crop years, as applicable when enrollment has occurred following election, CCC will make ACRE payments beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity or peanuts.

(a) CCC will make ACRE payments available to the producers on a farm for each crop year if the farm was enrolled following election and:

(1) The actual State revenue for the crop year for the covered commodity or peanuts in the State determined under paragraph (c) of this section is less than

(2) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under paragraph (d) of this section.

(b) Provided that the farm is enrolled following election and all other eligibility provisions are met, CCC will make ACRE payments available to the producers on a farm in a State for a crop year only if (as determined by CCC):

(1) The actual farm revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (h) of this section is less than

(2) The farm ACRE benchmark revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (i) of this section.

(c) The amount of the actual State revenue for a crop year of a covered commodity or peanuts will equal the product obtained by multiplying the average actual State yield for each planted acre for the crop year for the covered commodity or peanuts determined under paragraph (c)(1) of this section by the

7 CFR Ch. XIV (1–1–14 Edition)
section and the national average market price for the crop year for the covered commodity or peanuts determined under paragraph (c)(2) of this section.

(1) The average actual State yield for each planted acre for a crop year for a covered commodity or peanuts in a State will equal, as determined by CCC,

(i) The quantity of the covered commodity or peanuts that is produced in the State during the crop year, divided by

(ii) The number of acres that are planted to the covered commodity or peanuts in the State during the crop year and

(2) The national average market price for a crop year for a covered commodity or peanuts in a State will equal the greater of

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as determined by the Secretary, or

(ii) The established marketing assistance loan rate for the covered commodity or peanuts as reduced according to §1412.72.

(d) The ACRE program guarantee for a crop year for a covered commodity or peanuts in a State will equal 90 percent of the product obtained by multiplying

(1) The average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State determined under paragraph (e) of this section and

(2) The ACRE program guarantee price for the crop year for the covered commodity or peanuts determined under paragraph (f) of this section.

(e) The average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State is equal to the average yield per planted acre for the covered commodity or peanuts in the State for the most recent 5 crop year yields, excluding each of the crop years with the highest and lowest yields, using National Agricultural Statistics Service data to the extent possible.

(1) If CCC cannot establish the average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State in accordance with this paragraph or if the yield determined is an unrepresentative average yield for the State (as determined by the CCC), CCC will assign a benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in the State on the basis of:

(i) Previous average yields for a period of 5 crop years, excluding each of the crop years with the highest and lowest yields or

(ii) Average benchmark State yields for planted acres for the crop year for the covered commodity or peanuts in similar States.

(2) [Reserved]

(f) The ACRE program guarantee price for a crop year for a covered commodity or peanuts for the most recent 2 crop years, as determined by CCC.

(g) In the case of a State in which at least 25 percent of the acreage planted to a covered commodity or peanuts in the State is irrigated and at least 25 percent of the acreage planted to the covered commodity or peanuts in the State is not irrigated, CCC will calculate a separate ACRE program guarantee for the irrigated and non-irrigated areas of the State for the covered commodity or peanuts.

(h) The amount of the actual farm revenue for a crop year for a covered commodity or peanuts will equal the amount determined by multiplying:

(1) The actual yield for the covered commodity or peanuts of the producers on the farm and

(2) The national average market price for the crop year for the covered commodity or peanuts.
(i) The farm ACRE benchmark revenue for the crop year for a covered commodity or peanuts will equal the sum obtained by adding:

(1) The amount determined by multiplying:

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields and

(ii) The ACRE program guarantee price for the applicable crop year for the covered commodity or peanuts in a State and

(2) The amount of the per acre crop insurance premium required to be paid by the producers on the farm for the applicable crop year for the covered commodity or peanuts on the farm.

(ii) If ACRE payments are required to be paid for any of the 2009 through 2012 crop years of a covered commodity or peanuts under this section, the amount of the ACRE payment to be paid to the producers on the farm for the crop year under this section will be equal to the product obtained by multiplying:

(1) The lesser of—

(i) The difference between—

(A) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State and

(B) The actual State revenue from the crop year for the covered commodity or peanuts in the State and

(ii) 25 percent of the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State;

(2)(i) For each of the 2009 through 2011 crop years, 83.3 percent of the acreage planted or considered planted to the covered commodity or peanuts to harvest on the farm in the crop year and

(ii) For the 2012 crop year, 85 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year and

(3) The quotient obtained by dividing—

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields, by

(ii) The benchmark State yield for the crop year.

§1412.77 Transfer of land and succession-in-interest.

(a) Land subject to an ACRE election will continue to be subject to the election even if there is a transfer of land or change in interest of any producer on the farm. If a new owner or operator or producer purchases or obtains the right and interest in, or right to occupancy of, the land subject to an ACRE election option, such new owner or operator or producer, upon the approval of CCC, may choose to become a participant to a new ACRE program contract with CCC with respect to such transferred land in accordance with §1412.41.

(b) A succession in interest to an ACRE program contract may be permitted if there has been a change in the operation of a farm such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in the producer shares to reflect changes in the producer’s share of the crop(s) that were originally approved on the contract; or

(5) Another change as otherwise determined by the Deputy Administrator by which the succession will not adversely affect nor defeat the purpose of the program.

(c) A succession in interest to an ACRE program contract is not permitted if CCC determines that the change:

(1) Is not for all the time remaining under the ACRE program contract;

(2) Results in a violation of the landlord-tenant provisions specified in §1412.55; or

(3) Adversely affects or otherwise defeats the purpose of the program.

(d) The provisions of §1412.46(c) and (d) apply to ACRE participation.

(e) In any case in which a payment or payments have previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by

520
Commodity Credit Corporation, USDA

§ 1412.80 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this subpart will be divided in the manner specified in the applicable contract or agreement and CCC will ensure that producers, who would have an interest in acreage being offered, receive treatment that CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person’s eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in ACRE.

(b) CCC may remove an operator or tenant from an ACRE contract when the operator or tenant:

(1) Requests, in writing to be removed from the ACRE contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the ACRE contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants must maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to

§ 1412.79 Executed ACRE contract not in conformity with regulations.

If, after an ACRE contract is approved by CCC, it is discovered that such ACRE contract is not in conformity with the provisions of this part, the provisions of this part will prevail.

§ 1412.78 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of an ACRE contract, CCC may terminate the ACRE contract.

(2) If the ACRE contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under such contract and refund all payments previously received together with interest;

(ii) Pay liquidated damages to CCC in such amount as specified in such contract;

(iii) The acreage is ineligible for further DCP and ACRE participation from the time of termination through the end of the contract period regardless of the reason or reasons for such termination; and

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate. Participants are not entitled to either relief or even the consideration of relief under this paragraph. Relief under this paragraph is solely discretionary by the Deputy Administrator.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

comply with provisions under applicable State law, may be removed from a contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a ACRE participant specified in the applicable contract.

PART 1413—COMMODITY INCENTIVE PAYMENT PROGRAMS

Subpart A—Durum Wheat Quality Program

§ 1413.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Durum Wheat Quality Program (DWQP) as authorized by section 1613 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) will be administered.

(b) This program will operate only to the extent appropriated funding is available.

(c) Subject to available funding, eligible producers of durum wheat will be partially compensated for the cost of purchasing and applying fungicides to a crop of durum wheat to control Fusarium head blight on acres accurately certified as planted to durum wheat. “Available funding” requires that there be a specific appropriation for the program that applies to a particular crop for which the producer seeks compensation under this program.

§ 1413.102 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.

Application period means the dates established by the Deputy Administrator for Farm Programs for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

Crop year means the calendar year in which the wheat was harvested or intended to be harvested. For example, a reference to the 2010 crop year of wheat means wheat that when planted was intended for harvest in calendar year 2010.

Durum wheat means all varieties of white (amber) durum wheat as defined in the U.S. Standards for Wheat (7 CFR part 810, subpart M) including, but not limited to, hard amber durum wheat and amber durum wheat.

Flowering stage means the period of time during the wheat growth stage, after the head emergence has completed and prior to milk development in the kernel.

State committee, county committee or county office means the respective FSA committee or office.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

USDA means the United States Department of Agriculture.

§ 1413.103 Administration.

(a) DWQP will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Agency (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart, except as specified in paragraph (e) of this section.
(c) The State FSA committee will take any action required by the provisions of this subpart that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in compliance with the provisions of this subpart.

(2) Require a county FSA committee to not take an action that is not in compliance with the provisions of this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the Administrator, Deputy Administrator, or a designee from determining any question arising under the program in this subpart, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory program requirements of this subpart in cases where failure to meet such requirements does not adversely affect operation of the program in this subpart. Producers have no right to seek an exception under this provision. The Deputy Administrator’s refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

§ 1413.104 Eligibility.

(a) To be considered eligible for DWQP payments, the person or entity must have a share in the treated wheat crop on those acres planted to durum wheat on which an eligible fungicide was applied, as certified on the application, have incurred the cost of acquiring and applying eligible fungicide, and meet the requirements in paragraph (b) of this section.

(b) To be eligible for benefits, a person or entity must be a:

(1) Citizen of the United States;

(2) “Lawful alien” as defined in §1400.3 of this chapter;

(3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

(c) A minor child is eligible to apply for DWQP payments if all the eligibility requirements of this subpart are met and the requirements in part 1400 of this chapter that apply to minor children are met.

(d) A person or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm.

(e) State and local governments and their political subdivisions and related agencies are not eligible for DWQP payments.

(f) To be considered an eligible fungicide under this subpart, the fungicide must be:

(1) Registered with the U.S. Environmental Protection Agency, as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), unless exempt from FIFRA requirements;

(2) In compliance with State pesticide regulations, if applicable, in the State in which benefits are being requested; and

(3) Applied specifically to control Fusarium head blight on acres certified as planted by the producer to durum wheat for the applicable crop year.

(g) CCC will provide program benefits to reimburse eligible costs for a maximum of one fungicide treatment, including application cost, during the flowering stage, to a crop of durum wheat per crop year. Multiple or additional fungicide treatments, beyond a single treatment, to the same crop of wheat are not eligible for benefits.

§ 1413.105 [Reserved]

§ 1413.106 Application process.

(a) To apply for DWQP payment, the producer must submit, to the FSA county office that maintains the producer’s farm records for the agricultural operation, a completed application as specified in paragraph (c) of this section, including any supporting
(b) The producer must submit a completed application for payment and required supporting documentation to the administrative FSA county office during the relevant, for the crop, application period announced by FSA which will end no later than September 15 of the crop year in which the fungicide was applied to a crop of durum wheat.

(c) A complete application includes all of the following:
   (1) An application form provided by FSA;
   (2) Certification of the total number and location of acres planted to durum wheat on which an eligible fungicide was applied specifically to control Fusarium head blight;
   (3) Certification of the date durum wheat, on which an eligible fungicide was applied specifically to control Fusarium head blight, was planted;
   (4) Certification of the type of eligible fungicide applied to acres certified as planted to durum wheat;
   (5) Certification of the date eligible fungicide was applied to acres certified as planted to durum wheat;
   (6) Documentation providing adequate proof, as determined by FSA, of the producer’s actual cost of purchasing and applying eligible fungicide to acres certified as planted to durum wheat for one treatment; and
   (7) Any other documentation as determined by FSA to be necessary to make a determination of eligibility of the producer.

(d) The producer 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 provided is subject to verification by FSA.

(e) Data furnished by the producer 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.

§ 1413.107 Availability of funds.

(a) The 2008 Farm Bill authorizes up to $10 million to be appropriated for each of the 2009 through 2012 fiscal years for DWQP. Payments will not be made for claims for a particular crop year until after the application deadline, which is September 15 of that crop year, for the crop for which payment for the fungicide application is sought and only if funds are made available through an appropriation.

(b) In the event that approval of all eligible applications for fungicide treatments for a particular crop would result in expenditures in excess of the amounts appropriated for that crop year, the FSA Deputy Administrator will prorate the funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will prorate the payments in such manner as it determines appropriate and reasonable.

(c) Claims that are unpaid or paid at a reduced rate for a crop year for any reason will not be carried forward for payment under other funds for later crop years, unless provided for by law and approved by the Deputy Administrator. Such unpaid claims will be considered, as to any unpaid amount, void and nonpayable.

§ 1413.108 Payment calculation.

(a) Subject to the availability of DWQP funds, the payment to an eligible producer will be the result of adding (adjusted for the producer’s share of the crop):

   (1) The lesser of:
      (i) The result of multiplying the number of acres certified by the producer as planted to durum wheat on which an eligible fungicide was applied, during the flowering stage, times the per acre national fungicide acquisition payment rate set by the Deputy Administrator; or
      (ii) Fifty percent of the producer’s actual cost of purchasing eligible fungicide for acres certified as planted to durum wheat for the applicable crop year in a manner that would otherwise generate a payment under paragraph (a)(1)(i) of this section; plus
   (2) The result of multiplying the number of acres certified as planted to durum wheat on which an eligible fungicide was applied during the flowering stage, times the State application per acre payment rate set by the State.
committee, with such application payment not to exceed 50 percent of the actual application cost certified to by the producer.

(b) The national fungicide acquisition payment rate set by the Deputy Administrator will be based on 50 percent of the national average cost of eligible fungicide (only including the cost of the chemical itself), applied to one acre of durum wheat for the applicable crop year.

(c) The State application payment rate set by the State committee will be based on 50 percent of the State average cost of applying an eligible fungicide to one acre of durum wheat for the applicable crop year.

§ 1413.109 Refunds, joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this subpart, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and otherwise determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an application for payment as having an interest in an operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1413.110 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, a producer will be ineligible for payment through the DWQP if the producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this subpart to any producer engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of disbursement of the CCC funds. Any producer engaged in acts prohibited by this section and any producer receiving payment as specified in this subpart will be jointly and severally liable with other persons or producers involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1413.111 Miscellaneous provisions.

(a) Other interests. Any payment to any producer under this part 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.

(b) Assignments. Any producer entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

(c) Offsets. CCC may offset or withhold any amount due to CCC from any benefit provided under this subpart in accordance with the provisions of part 1403 of this chapter and part 792 of this title.

(d) Violations of highly erodible land and wetland conservation provisions. The provisions of part 12 of this title apply
§ 1413.112 Appeals.

(a) Appeals. Appeal regulations set forth at parts 11 and 780 of this title apply to determinations made under this subpart.

(b) Determinations not eligible for administrative review or appeal. CCC determinations and policies that are not limited to a specific individual producer’s application are not to be construed to be individual program eligibility determinations or adverse decisions and are, therefore, not subject to administrative review or appeal under 7 CFR part 11 or part 780 of this title (but nothing in the regulations for this program will limit the ability of the National Appeals Division to decide its own jurisdiction under part 11). Such determinations include, but are not limited to, application periods, deadlines, crop years, prices, general statutory or regulatory provisions that apply to similarly situated producers, national average payment prices, and payment factors established by CCC for DWQP for which this subpart applies or similar matters requiring CCC determinations.

§ 1413.113 Deceased individuals or dissolved entities.

(a) Payment may be made for an eligible application on behalf of an eligible 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 producer 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 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.

§ 1413.114 Records and inspections.

(a) Any producer receiving DWQP payments, or any other legal entity or person who provides information for the purposes of enabling a producer to receive a DWQP payment, must:

1. Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

2. Allow authorized representatives of USDA and the U.S. Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable acreage in which the producer has an interest for the purpose of confirming the accuracy of information provided by or for the producer.

(b) [Reserved]
§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners and operators in protecting and restoring grazing uses and related conservation values by conserving and restoring grassland resources on eligible private lands through rental contracts, easements, and restoration agreements.

(b) GRP emphasizes:

(1) Supporting grazing operations;

(2) Maintaining and improving plant and animal biodiversity; and

(3) Protecting grasslands and shrublands from the threat of conversion to uses other than grazing.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction, development of the national allocation formula, and development of broad national ranking criteria;

(2) Use a national allocation formula to provide GRP funds to NRCS State Conservationists and FSA State Executive Directors that emphasizes support for grazing operations, biodiversity of plants and animals, and grasslands under the greatest threat of conversion to uses other than grazing. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population of a grassland-dependent bird(s) or animal(s);

(3) Ensure the national, State, and local-level information regarding program implementation is made available to the public;

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction; and

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

(1) Determining how funds will be used and how the program will be implemented at the State level to achieve the program purposes;

(2) Identifying State priorities for project selection based on input from the State Technical Committee;

(3) Identifying Department of Agriculture (USDA) employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;

(4) Developing, with advice from the State Technical Committee, program outreach materials at the State and local levels to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;

(5) Approving conservation practices eligible for cost-share and cost-share rates;

(6) Developing GRP management plans and restoration agreements, when applicable;

(7) Administering and enforcing the terms of easements and rental contracts unless this responsibility is transferred to an eligible entity as provided in §1415.17 and §1415.18; and

(8) Developing, with advice from the State Technical Committee, criteria for ranking eligible land consistent with national criteria and program objectives and State priorities.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS and FSA to implement GRP.
(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The NRCS Chief or the FSA Administrator may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part, which is required by law, may be waived.

(f) No delegation in this part to lower organizational levels will preclude the NRCS Chief or the FSA Administrator from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. Eligible entities wishing to enter into a cooperative agreement under §1415.17 in order to purchase, own, write, and hold easements may apply on a continuous basis to the NRCS State Conservationist. The NRCS State Conservationist and FSA State Executive Director will establish cut-off periods to rank and select applications for participation. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded eligible applications will remain on file until they are funded or the applicant chooses to be removed from consideration.

(j) The services of third parties as provided for in part 652 of this title may be used to provide technical services to participants.
Conservation plan means a record of the GRP participants’ decisions and supporting information that will be developed to address resource concerns in addition to grazing land uses. The conservation plan will describe the implementation and maintenance of GRP management and conservation practices directly related to any additional land eligibility criteria under which the land is enrolled. Additional land eligibility criteria may include, but is not limited to, significant animal or plant habitat and historical or archeological resources.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS Field Office Technical Guide (FOTG) standards and specifications.

Conservation values means those natural resource attributes that sustain and enhance ecosystem functions and values of the grassland area including, but not limited to, habitat for grassland and shrubland dependent plants and animals, native plant and animal biodiversity, soil erosion control, forage production, and air and water quality protection.

Cost-share payment means the payment made by USDA to a program participant or vendor to achieve the restoration, enhancement, and protection goals in accordance with the GRP restoration plan component of the restoration agreement.

Dedicated account means a dedicated fund of the eligible entity held in a separate account for the management, monitoring, and enforcement of conservation easements and that cannot be used for other purposes.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States, an eligible entity, or both for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed by a conservation easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States, an eligible entity, or both under GRP.

Eligible entity means, for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d), an agency of State or local government, an Indian Tribe, or a nongovernmental organization that has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland; has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and has the resources necessary to effectuate the purposes of the charter.

Enhancement means to increase or improve the viability of grassland and grazing resources, including habitat for declining species of grassland dependent birds and animals.

Farm Service Agency is an agency of the Department of Agriculture.

FSA State Executive Director means the FSA employee authorized to implement GRP and direct and supervise FSA activities in a State, Caribbean Area, or the Pacific Islands Area.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Fire pre-suppression means activities as outlined in a GRP management plan such as the establishment and maintenance of firebreaks and prescribed burning to prevent or limit the spread of fires.

Forb means any herbaceous plant other than those in the grass family.

Functions and values of grasslands and shrublands means ecosystem services provided, including domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native
insects), water quality and quantity benefits, aesthetics, open space, and recreation.

*Grantor* means the landowner who is transferring land rights to the United States or an eligible entity, or both through an easement.

*Grassland* means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

*GRP management plan* means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the FOTG. The GRP management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or conservation plan, if applicable, and a description of USDA’s right of ingress and egress.

*Grazing value* means the financial worth of the land as used for grazing or forage production. The term is used in the calculation of compensation for rental contracts and easements. For easements, this value is determined by NRCS through an appraisal process or a market survey process. For rental contracts, FSA determines the grazing value based upon an administrative process.

*Historical and archeological resources* mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, et seq.);

(2) Formally determined eligible for listing the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and Keeper of the National Register in accordance with section 106 or the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the Tribal Register of Historic Places (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

*Improved rangeland or pastureland* means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Landowner* means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. The term landowner includes Indian Tribes. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners.

*Legal entity* means an entity created under Federal or State law and that: (1) Owns land or an agricultural commodity, product, or livestock; or (2) produces an agricultural commodity, product, or livestock.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to manage and prevent deterioration, repair damage, or replace the practice to its original condition if one or more components fail.

*Native* means a species that is indigenous and is a part of the original fauna or flora of the area.

*Natural Resources Conservation Service* is an agency of the Department of Agriculture.

*NRCS State Conservationist* means the NRCS employee authorized to implement GRP and direct and supervise
NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

Naturalized means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. The term naturalized does not include noxious weeds.

Nesting season means the time of year that grassland dependent birds in significant decline in the local area build nests or otherwise find a place of refuge for purposes of reproduction.

Nongovernmental organization means any organization that:

1. Is organized for, and at all times since, the formation of the organization, and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

2. Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

3. Is described—

   (i) In section 509(a)(1) or 509(a)(2) of that Code, or

   (ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Participant means a person, legal entity, joint operation, or Indian Tribe who is accepted to participate in GRP through a rental contract or option agreement to purchase an easement.

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and cultural treatments, such as tillage, aeration, fertilization, mowing, and weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

Permanent easement means an easement that lasts in perpetuity or for the maximum duration allowed under the law of a State.

Private land means land that is not owned by a governmental entity and includes Tribal lands.

Purchase price means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement.

Rangeland means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland.

Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon juniper are also included as rangeland.

Rental contract means the legal document that specifies the obligations and rights of a participant in GRP, including the annual rental payments to be provided to the participant for the length of the contract to maintain or restore grassland functions and values under GRP.

Restoration means implementing any conservation practice, system of practices, or activities to restore functions and values of grasslands and shrublands. The restoration may re-establish grassland functions and values on degraded land, or on land that has been converted to another use.

Restoration agreement means an agreement between the program participant and NRCS or eligible entity to carry out activities and conservation practices necessary to restore or improve the functions and values of that land. A restoration agreement will include a restoration plan.

Restoration plan is the portion of the restoration agreement that includes the schedule and conservation practices and activities to restore the functions and values of grasslands and shrublands, including protection of associated streams, ponds, and wetlands. The restoration plan incorporates the requirement that program participants
will maintain GRP-funded conservation practices and activities for their expected lifespan as described in the plan.

Right of enforcement means a property interest in the easement the Chief may exercise on behalf of the United States under specific circumstances in order to enforce the terms of the conservation easement. The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

Secretary means the Secretary of the Department of Agriculture.

Shrubland means land where the dominant plant species is shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

Significant decline means a decrease of a species population to such an extent that it merits conservation priority as determined by the State Conservationist, in consultation with the State Technical Committee.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Tribal land means:
(1) Land held in trust by the United States for individual Indians or Indian Tribes; or
(2) Land, the title to which is held by Indian Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or
(3) Land which is subject to rights of use, occupancy, and benefit of certain Indian Tribes; or
(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

USDA means the Department of Agriculture and its agencies and offices, as applicable.

§ 1415.4 Program requirements.
(a) Except as provided for under §1415.17, only landowners may submit applications for easements. For rental contracts, applicants must own or provide written evidence of control of the property for the duration of the rental contract.

(b) The easement or rental contract will require that the area be maintained in accordance with GRP goals and objectives for the term of the easement or rental contract, including the conservation, protection, enhancement, and if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a GRP management plan approved by NRCS. When an eligible entity holds the GRP easement, NRCS will develop GRP management plans with eligible entities. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

(d) The easement or rental contract must grant USDA or its representatives a right of ingress and egress to the easement or rental contract area. For easements, this access is legally described by the conservation easement deed and the GRP management plan. Access to rental contract areas is identified in the GRP management plan.

(e) Easement participants are required to convey unencumbered title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States or eligible entity is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by USDA.

(f) Landowners are required to use a standard GRP conservation easement deed developed by USDA or developed by an eligible entity and approved by USDA under §1415.17 of this part. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental contract, and comply with all terms and conditions of the GRP management plan and any associated conservation plan or restoration agreement.
(h) Easements and rental contracts allow, consistent with their terms and the program purposes, the following activities as outlined in the GRP management plan:

(1) Common grazing practices, including maintenance and necessary conservation practices and activities (e.g., prescribed grazing; upland wildlife habitat management; prescribed burning; fencing, watering, and feeding necessary for the raising of livestock; and related forage and seed production) on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law;

(3) Fire pre-suppression, rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;

(5) Facilities for power generation through renewable sources of energy production provided the scope and scale of the footprint of the facility and associated infrastructure is consistent with program purposes as determined by USDA through analysis of the potential site-specific environmental effects; and

(6) Other activities that USDA determines the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under an easement or rental contract. This includes infrastructure development along existing right-of-ways where the easement deed allows the landowner to grant right-of-ways when it is determined by NRCS that granting such right-of-ways are in the public interest, that grassland resources and related conservation values will not be adversely impacted, and the landowner agrees to a restoration plan for the disturbed area as developed by NRCS.

(i) Easement and rental contracts prohibit the following activities:

(1) The production of crops (other than hay), orchards, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land and related conservation values; and

(2) Except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.

(j) Rental contracts may be terminated by USDA without penalty or refund if the original participant dies, is declared legally incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert a rental contract to an easement, provided that funds are available and the project meets conditions established by USDA. Land cannot be enrolled in both a rental contract option and an easement enrollment option at the same time. The rental contract will be terminated prior to the date the easement is recorded in the local land records office.

(l) Rental contract participants are required to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary.

(m) Easement participants are required to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly owned land is not eligible.

(b) Land is eligible for funding consideration if the State Conservationist determines that the land is:

(1) Grassland, land that contains forbs or shrubland (including improved...
rangeland and pastureland) for which grazing is the predominant use; or

(2) Located in an area that has been historically dominated by grassland, forbs, or shrubland, and the State Conservationist, with advice from the State Technical Committee, determines that it is compatible with grazing uses and related conservation values, and

(i) Could provide habitat for animal or plant populations of significant ecological value if the land is retained in its current use or is restored to a natural condition,

(ii) Contains historical or archaeological resources, or

(iii) Would address issues raised by State, regional, and national conservation priorities.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental contract. Incidental lands may include relatively small areas that do not specifically meet the eligibility requirements, but as a part of the land unit, may contribute to grassland functions and values and related conservation values, or its inclusion may increase efficiencies in land surveying, easement management, and monitoring by reducing irregular boundaries.

(d) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract, easement, or deed restriction, or if the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values. This land becomes eligible for enrollment in GRP if the existing contract, easement, or deed restriction expires or is terminated, and the grassland values and functions are no longer protected.

(e) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on the property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP, an applicant, except as otherwise described in §1415.17:

(a) Must be a landowner for easement participation or be a landowner or have control of the eligible acreage being offered for rental contract participation;

(b) Agree to provide such information to USDA that is necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400 of this title, unless exempted under part 1400 of this title;

(d) Meet the conservation compliance requirements found in part 12 of this title;

(e) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 3 CFR parts 25 and 170.

§ 1415.7 Application procedures.

(a) Applicants, except as otherwise described under §1415.17, may submit an application through a USDA Service Center for participation in GRP. Applications may be submitted throughout the year.

(b) By filing an application for participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental contract for which they seek to enroll their land. Rental contracts may be for the duration of 10-years, 15-years, or 20-years; easements may be permanent in duration or for the maximum duration authorized by State law.
§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to NRCS State Conservationists and FSA State Executive Directors, national guidelines for establishing State-specific ranking criteria for selection of applications for funding.

(b) NRCS State Conservationists and FSA State Executive Directors, with advice from State Technical Committees, establish criteria to evaluate and rank applications for easement and rental contract enrollment, including applications from eligible entities under §1415.17, following the guidance established in paragraph (a) of this section.

c) Ranking criteria will emphasize support for:

1. Grazing operations;
2. Protection of grassland, land that contains forbs, and shrubland at the greatest risk from the threat of conversion to uses other than grazing;
3. Plant and animal biodiversity; and
4. In ranking parcels offered by eligible entities, these additional criteria will also be considered—
   i. Leverage of non-Federal funds, and
   ii. Entity contributions in excess of 50 percent of the purchase price, as defined in §1415.3.

(d) When funding is available, NRCS State Conservationists and FSA State Executive Directors will periodically select for funding the highest ranked applications, including applications from entities under §1415.17, based on applicant and land eligibility and the State-developed ranking criteria.

e) NRCS State Conservationists and FSA State Executive Directors may establish separate ranking pools to address, for example, specific conservation issues raised by State, regional, and national conservation priorities.

(f) The NRCS State Conservationist and FSA State Executive Director, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The NRCS State Conservationist and the FSA State Executive Director, with advice from the State Technical Committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, the State Conservationist or State Executive Director may select a lower ranked application that can be fully funded.

(i) Land enrolled in a Conservation Reserve Program (CRP) contract that is within one year of the scheduled expiration date will receive a priority for enrollment. To receive this priority, the following criteria must be met:

1. The land must be eligible as defined in §1415.5;
2. USDA, with advice from the State Technical Committee, must determine it is of high ecological value and under significant threat of conversion to uses other than grazing;
3. The land must be offered for easement or 20-year rental contract enrollment;
4. Expired CRP land enrolled under this priority will not exceed 10 percent of the total number of acres accepted for national enrollment in CRP in any year; and
5. This priority applies only up to 12 months before the scheduled expiration of the CRP contract.

(j) USDA will manage the program nationally to ensure that, to the extent practicable, 60 percent of funds are used for the purchase of easements, either directly or through cooperative agreements with eligible entities as set forth in §1415.17 and 40 percent of funds are used for rental contracts.

§ 1415.9 Enrollment of easements and rental contracts.

(a) Based on the priority ranking, NRCS or FSA, as appropriate, will notify applicants in writing of their tentative acceptance into the program for either rental contract or conservation easement options. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant. Enrollment under cooperative agreements is described under §1415.17.

(b) An offer of tentative acceptance into the program neither binds USDA to acquire an easement or enter into a
rental contract, nor binds the applic-
tant to convey an easement, enter into
a rental contract, or agree to restora-
tion activities.
(c) Offer of enrollment will be
through either:
(1) An agreement to purchase an
easement presented by NRCS to the ap-
plicant which will describe the ease-
ment, the easement terms and condi-
tions, and other terms and conditions
that may be required by NRCS; or
(2) A rental contract will be pre-
sented by FSA to the applicant which
will describe the contract area, the
contract terms and conditions, and
other terms and conditions that may
be required by FSA.
(d) For rental contracts, land will be
considered to be enrolled in GRP once
an FSA representative approves the
GRP rental contract. FSA may with-
draw the offer before approval of the
contract due to lack of available funds
or other reasons.
(e) For easements, after the option
agreement to purchase an easement is
executed by NRCS and the participant,
the land will be considered enrolled in
GRP. NRCS will proceed with the de-
velopment of the GRP management plan,
conservation or restoration plan if applicable, and various easement ac-
quision activities, which may include
conducting a legal survey of the ease-
mement area, securing necessary subordi-
nation agreements, procuring title in-
surance, and conducting other activi-
ties necessary to record the easement
or implement GRP.
(f) Prior to closing an easement,
NRCS may withdraw the land from en-
rollment at any time due to lack of
available funds, title concerns, or other
reasons.
§ 1415.10 Compensation for easements
and rental contracts acquired by
the Secretary.
(a) The Chief will not pay more than
the fair market value of the land, less
the grazing value of the land encum-
bered by the easement.
(b) To determine this amount, the
Chief will pay as compensation the
lowest of:
(1) The fair market value of the land
encumbered by the easement as deter-
mined by the Chief using—
(i) The Uniform Standards of Profes-
sional Appraisal Practice, or
(ii) An area-wide market analysis or
market survey;
(2) The amount corresponding to a
geographical cap, as determined by the
State Conservationist, with advice
from the State Technical Committee;
(3) An offer made by the landowner.
(c) For 10-, 15-, and 20-year rental
contracts, the participant will receive
not more than 75 percent of the grazing
value in an annual payment for the
length of the contract, as determined
by FSA. As provided by the regulations
at part 1400 of this title, payments
made under one or more rental con-
tracts to a person or legal entity, di-
rectly or indirectly, may not exceed, in
the aggregate, $50,000 per year.
(d) In order to provide for better uni-
formity among States, the NRCS Chief
and FSA Administrator may review
and adjust, as appropriate, State or
other geographically based payment
rates for rental contracts.
(e) Easement or rental contract pay-
ments received by a participant will be
in addition to, and not affect, the total
amount of payments that the partici-
 pant is otherwise eligible to receive
under other USDA programs.
(f) Easement payments will be made
in a single payment to the landowner
unless otherwise requested by the land-
owner.
(g) USDA may accept and use con-
tributions of non-Federal funds to sup-
port the purposes of the program.
These funds are available to USDA
without further appropriation and
until expended, to carry out the pro-
gram.
(h) USDA recognizes that environ-
mental benefits will be achieved by im-
plementing conservation practices and
activities funded through GRP, and
that ecosystem credits may be gained
as a result of implementing activities
compatible with the purposes of a GRP
easement, rental contract, or associ-
ated restoration agreement. USDA as-
serts no direct or indirect interest in
these credits except:
(1) In the event the participant sells
or trades credits arising from GRP
Commodity Credit Corporation, USDA

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental contracts. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant’s objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration plan component of the restoration agreement identifies conservation practices and activities necessary to restore or improve the functions and values of the grassland to meet both USDA and the participant’s objectives and purposes of the program. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental contract through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, determines the conservation practices and activities and the cost-share percentages, not to exceed statutory limits available under GRP. A list of conservation practices and activities approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS may work through the local conservation district with the program participant to determine the terms of the restoration plan. The conservation district may assist NRCS with determining eligible conservation practices and activities and approving restoration agreements.

(c) Only approved conservation practices and activities are eligible for cost-sharing. Payments under the GRP restoration agreements may be made to the participant of not more than 50 percent for the cost of carrying out the conservation practices or activities. As provided by the regulations at part 1400 of this chapter, payments made under one or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(d) The participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement.

(e) All conservation practices must be implemented in accordance with the FOTG.

(f) Technical assistance is provided by NRCS, or an NRCS approved third party.

(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration.

(h) The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

(i) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(j) Conservation practices and activities identified in the restoration plan...
§ 1415.12 Modifications to easements and rental contracts.

(a) After an easement has been recorded, no substantive modification will be made to the easement. Modifications that would not result in acquisition or divestiture of additional property rights may be made.

(b) State Conservationists may approve modifications for restoration agreements and GRP management plans or conservation plans where applicable, as long as the modifications do not affect the provisions of the easement and meet program objectives.

(c) USDA may approve modifications to rental contracts, including corresponding changes to conservation plans, GRP management plans, and restoration plans to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to an applicant's acceptance into the program will void the offer of enrollment, unless at the option of the State Conservationist or State Executive Director, as appropriate, an offer is extended to the new landowner and the new landowner agrees to the same easement or rental contract terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner is responsible for complying with the terms of the recorded easement, and the contract successor is responsible for complying with the terms of the rental contract and for assuring completion of all activities and practices required by any associated restoration agreement. Eligible cost-share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to participants, the United States bears no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments, without the accrual of interest, pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement will apply to any of its agents or assigns. All obligations of the participant under the GRP conservation easement deed also bind the participant’s heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental contracts may be transferred to another landowner, operator, or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by FSA to be eligible to participate in GRP and must assume full responsibility under
the contract. FSA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental contract, and the new landowner, operator, or tenant is not eligible to participate in the program or declines to assume responsibility under the contract.

§ 1415.14 Misrepresentation and violations.

(a) The following provisions apply to violations of rental contracts:
(1) Rental contract violations, determinations, and appeals are handled in accordance with the terms of the rental contract;
(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest, in accordance with part 1403 of this title; and
(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:
(1) Easement violations are handled under the terms of the easement deed;
(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement deed or remedy deficiencies or violations;
(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice; and
(4) The participant will be liable for any costs incurred by the United States as a result of the participant’s negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States will be entitled to recover any and all administrative and legal costs, including attorney’s fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental, or easement payment or portion thereof due any person under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity will use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:
§ 1415.17

(1) A commitment to long-term conservation of agricultural lands, ranchland, or grassland for grazing and conservation purposes;
(2) A capability to acquire, manage, and enforce easements;
(3) Sufficient number of staff dedicated to monitoring and easement stewardship;
(4) The availability of funds; and
(5) For nongovernmental organizations, the existence of a dedicated account and funds for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions;
(2) The management and enforcement of the interests acquired;
(3) The responsibilities of NRCS;
(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP;
(5) The parcels accepted by the State Conservationist, landowners’ names, addresses, location maps, and other relevant information in an attachment to the cooperative agreement;
(6) The allowance of parcel substitution upon mutual agreement of the parties;
(7) The manner in which violations are addressed;
(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity’s enforcement of the easements;
(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary;
(10) The eligible entity’s agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the GRP management plan or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise;
(11) The source of funding. The eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity’s share of the purchase price;
(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity;
(13) GRP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity;
(14) NRCS may provide a share of the purchase price of an easement under the program. The eligible entity will be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in §1415.3;
(15) The eligible entity’s succession plan, which describes how its successors or assigns will hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS; and
(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Easements funded under the cooperative agreement option will be in perpetuity, except where State law prohibits a permanent easement, and will require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement.

(e) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template will be reviewed and approved by the Chief.
NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(1) In order to protect the public investment, the conveyance document must contain a right of enforcement. NRCS will specify the terms for the right of enforcement clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government;

(2) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS;

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed;

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation will be provided to NRCS by the eligible entity; and

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in GRP.

§ 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrublands;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the GRP management plan or conservation plan, as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections to verify the eligible entities enforcement of the easement, which includes the terms and requirements set forth in the GRP management plan and any associated restoration or conservation plan for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement will apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranch land, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in §1415.17(b)(5), if the entity is a non-governmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief or his or her successors and assigns, will retain a right of enforcement in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed will continue to apply to the United States. Upon transfer of the...
§ 1415.19

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part will report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs

Sec.
1416.1 Applicability.
1416.2 Eligible counties, hurricanes, and disaster periods.
1416.3 Administration.
1416.4 Definitions.
1416.5 Application for payment.
1416.6 Limitations on payments and other benefits.
1416.7 Insurance requirements.
1416.8 Appeals.
1416.9 Offsets, assignments, and debt settlement.
1416.10 Records and inspections thereof.
1416.11 Refunds; joint and several liability.

Subpart B—Livestock Compensation Program

1416.100 Applicability.
1416.101 Definitions.
1416.102 Eligible livestock and producers.
1416.103 Application process.
1416.104 Payment calculation.
1416.105 Availability of funds.

Subpart C—Livestock Indemnity Program II

1416.200 Applicability.
1416.201 Definitions.
1416.202 Eligible owners and contract growers.
1416.203 Eligible livestock.
1416.204 Application process.
1416.205 Payment calculation.
1416.206 Availability of funds.

Subpart D—Citrus Disaster Program

1416.300 Applicability.
1416.301 Definitions.
1416.302 Eligible crops and producers.
1416.303 Application process.
1416.304 Payment calculations.
1416.305 Availability of funds.
§ 1416.2 Eligible counties, hurricanes, and disaster periods.

(a) Except as provided in paragraph (c) of this section, the Commodity Credit Corporation (CCC) will provide assistance under the programs listed in §1416.1 to eligible producers who have suffered certain losses due to 2005 hurricanes Dennis, Katrina, Ophelia, Rita, or Wilma, or a related condition, in the counties provided in paragraph (d) of this section. CCC funds for the programs in subparts B through I of this part are made available under the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(b) The “Disaster Period” is the time period in which losses occurred that may be considered eligible for the programs under subparts B, C, H and I of this part.

(c) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 provides that no producer receives duplicative payments under the programs in subparts B through I of this part and any other Federal programs for the same loss. Under the regulations at 7 CFR part 760, Subpart E, eligible livestock owners and contract growers were provided benefits for certain livestock deaths that occurred as a result of 2005 hurricanes Dennis, Katrina, Ophelia, Rita, or Wilma in many of the same counties as provided in paragraph (d) of this section. The benefits provided under 7 CFR part 760,
Subpart E. are significantly greater than the benefits to be provided under Subpart C of this part. Accordingly, to ensure the statutory requirement that no producer receives duplicative payments under the program in Subpart C of this section and any other Federal program for the same loss, eligible livestock under the program in Subpart C of this section shall be limited to catfish and crawfish in any county listed in paragraph (d) of this section that was an eligible county under 7 CFR 760.101.

(d) Counties are eligible for emergency disaster assistance under this Act if they received a Presidential designation or Secretarial declaration or are counties contiguous to such counties. Accordingly, the following counties are eligible:

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Katrina</th>
<th>Ophelia</th>
<th>Rita</th>
<th>Wilma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Baldwin</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Bibb</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Blount</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Butler</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Chilton</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Choctaw</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Clarke</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Colbert</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Conecuh</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Covington</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Cullman</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Dallas</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Escambia</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Fayette</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Franklin</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Geneva</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Greene</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Hale</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Jefferson</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Lamar</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Lauderdale</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Lawrence</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Limestone</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Lowndes</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Marengo</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Marion</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Marshall</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Mobile</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Monroe</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Morgan</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Perry</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Pickens</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>St. Clair</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Shelby</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Sumter</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Tuscaloosa</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Walker</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Washington</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Wilcox</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Winston</td>
<td>8/29/05-10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Ashley</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Chicot</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Columbia</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Crittenden</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Desha</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Lafayette</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Lee</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Miller</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Phillips</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>St. Francis</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Union</td>
<td>8/29/05-10/28/05</td>
<td>9/23/05-11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Bay</td>
<td>8/24/05-10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Brevard</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Broward</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Calhoun</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Charlotte</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Collier</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>De Soto</td>
<td>8/24/05-10/23/05</td>
<td>10/23/05-12/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>County</td>
<td>Disaster period</td>
<td>Katrina</td>
<td>Ophelia</td>
<td>Rita</td>
</tr>
<tr>
<td>--------</td>
<td>----------------</td>
<td>--------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Florida</td>
<td>Escambia</td>
<td>8/24/05–10/23/05</td>
<td>B B B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Franklin</td>
<td>8/24/05–10/23/05</td>
<td>B B B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Glades</td>
<td>8/24/05–10/23/05</td>
<td>B B B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Gulf</td>
<td>8/24/05–10/23/05</td>
<td>B B B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Hardee</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Hendry</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Highlands</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Hillsborough</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Holmes</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Indian River</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Jackson</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Lee</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Liberty</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Manatee</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Martin</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Miami-Dade</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Monroe</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Okaloosa</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Oklawhobee</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Orange</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Osceola</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Palm Beach</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Polk</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>St. Lucie</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Santa Rosa</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Sarasota</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Volusia</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Walton</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>Washington</td>
<td>8/24/05–10/23/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Acadia</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Allen</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Assumption</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Auyemelles</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Beauregard</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Bienville</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Bossier</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Caddo</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Calcasieu</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Caldwell</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Cameron</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Catahoula</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Claiborne</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Concordia</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>De Soto</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>East Baton Rouge</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>East Carroll</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>East Feliciana</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Evangeline</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Franklin</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Grant</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Iberia</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Iberville</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Jackson</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Jefferson</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Jefferson Davis</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Lafayette</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Labouche</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>La Salle</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Lincoln</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Livingston</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Madison</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Morehouse</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Natchitoches</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Orleans</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Ouachita</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Plaquemines</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Pointe Coupee</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Rapides</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Red River</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>County</td>
<td>Disaster period</td>
<td>Katrina</td>
<td>Ophelia</td>
<td>Rita</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------</td>
<td>--------------------------</td>
<td>---------</td>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Richland</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sabine</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Bernard</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Charles</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Helena</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. James</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. John the</td>
<td>Baptist</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>St. Landry</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Martin</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Mary</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Tammany</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Tangipahna</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Tensas</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Terrebonne</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Union</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Vermilion</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Vernon</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Washington</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Webster</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>West Baton Rouge</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>West Feliciana</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Winn</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Adams</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Alcorn</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Amite</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Attala</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Benton</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Bolivar</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Calhoun</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Carroll</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Chickasaw</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Choctaw</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Claiborne</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Clarke</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Clay</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Coahoma</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Copiah</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Covington</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>De Soto</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Forrest</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Franklin</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>George</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Greene</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Grenada</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Hancock</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Harrison</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Hinds</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Holmes</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Humphreys</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Issaquena</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Itawamba</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Jackson</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Jasper</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Jefferson</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Jefferson Davis</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Jones</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Kemper</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lafayette</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lamar</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lauderdale</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lawrence</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Leake</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lee</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Leflore</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lincoln</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Lowndes</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Madison</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Marion</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Marshall</td>
<td>8/29/05–10/28/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>County</td>
<td>Disaster period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-----------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Monroe</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Montgomery</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Neshoba</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Newton</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Nueces</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Okfuskee</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Panola</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Pearl River</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Perry</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Pike</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Pontotoc</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Prentiss</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Quitman</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Rankin</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Scott</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Sharkey</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Simpson</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Smith</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Stone</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Sunflower</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Tallahatchie</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Tate</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Tippah</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Tishomingo</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Tunica</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Union</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Washington</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Wayne</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Webster</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Wilkinson</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Winston</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Yalobusha</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Yazoo</td>
<td>8/29/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Beaufort</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Bladen</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Brunswick</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Carteret</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Columbus</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Craven</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Currituck</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Dare</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Duplin</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Hyde</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Jones</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Lenoir</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>New Hanover</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Onslow</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Pamlico</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Pender</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Pitt</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Sampson</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Tyrrell</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Washington</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>Horry</td>
<td>9/11/05–11/10/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Fayette</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Giles</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Hardeman</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Hardin</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Lawrence</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>McNairy</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Shelby</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Wayne</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Anderson</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Angelina</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Austin</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Brazoria</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Cass</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Chambers</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Cherokee</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Fort Bend</td>
<td>8/20/05–10/28/05</td>
<td>9/23/05–11/22/05</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
§ 1416.3 Administration.

(a) These programs are administered under the general supervision of the Administrator, Farm Service Agency (FSA), or Executive Vice President of CCC.

(b) CCC representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through I of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through H 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 H of this part; or

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

(d) No provision or delegation to a State or county FSA committee shall preclude the Executive Vice President, CCC, 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.

§ 1416.4 Definitions.

The following definitions apply to the programs in subparts B through H of this part. The definitions in parts 718 and 1400 of this chapter shall also apply, except where they conflict with the definitions in this section.

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 in the ground 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

---

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Disaster period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Katrina</td>
</tr>
<tr>
<td>Texas</td>
<td>Galveston</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Gregg</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Grimes</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Hardin</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Harris</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Harrison</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Henderson</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Houston</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Jasper</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Jefferson</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Leon</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Liberty</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Madison</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Maton</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Matagorda</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Montgomery</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Morris</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Nacogdoches</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Newton</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Orange</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Panola</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Polk</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Rusk</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Sabine</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>San Augustine</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>San Jacinto</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Shelby</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Smith</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Trinity</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Tyler</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Upshur</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Walker</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Waller</td>
<td>9/23/05-11/22/05</td>
</tr>
<tr>
<td>Texas</td>
<td>Wharton</td>
<td>9/23/05-11/22/05</td>
</tr>
</tbody>
</table>
Commodity Credit Corporation, USDA

§ 1416.6 Limitations on payments and other benefits.

(a) A producer may receive no more than $80,000 under LCP, subpart B of this part.

(b) A producer may receive no more than $80,000 under LIP–II, subpart C of this part.

(c) A single producer may receive no more than $80,000 total combined payments from subpart D of this part, the Citrus Disaster Program, subpart E of this part, the Fruit and Vegetable Program, subpart F of this part, the Tropical Fruit Program, and subpart G of this part, the Nursery Program.

(d) Limits per person for payments made under subpart I of this part for Catfish Grants will be $80,000 per producer. This limit shall be enforced by the State administering the grant program.

(e) 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 except for TAP and Catfish Grants.

(f) As a condition to receive benefits under this part, 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.

(g) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under this part.

(h) In addition to limitations provided in each subpart of this part, producers cannot receive duplicate benefits under this part and any other Federal programs for the same loss, including but not limited to the following:

1. Crop insurance indemnity payments under 7 CFR Part 400;
2. The Noninsured Crop Disaster Assistance Program, part 1437 of this chapter;
3. Part 701 of this title, the Emergency Conservation Program;
4. The Hurricane Indemnity Program, subpart C of part 760 of this title.

(i) An applicant’s actual loss or actual costs incurred because of losses due to an eligible hurricane must equal or exceed the benefit requested under this part.

§ 1416.7 Insurance requirements.

For the Citrus, Fruit and Vegetable, Tropical Fruit and Nursery Disaster Programs:

(a) Payment rates for producers who did not have crop insurance or coverage under the Noninsured Crop Disaster Assistance Program (NAP) will be 5 percent less than the rates received by producers who did have crop insurance or NAP coverage.

(b) Eligible producers who elected to not purchase crop insurance on an insurable crop, or to sign up for NAP that was available on an uninsurable crop for which benefits are received under these programs, must purchase such coverage for the next available coverage period in the form of:

1. Crop insurance that is, at a minimum, at the catastrophic level on that crop, although producers required to purchase a citrus policy may purchase a fruit or tree policy; or
2. NAP coverage.

(c) If a producer who is required to purchase crop insurance or NAP for the applicable year fails to do so, the producer must refund any disaster payment made under these programs. Required refunds will be serviced as a claim under part 1408 of this chapter.

§ 1416.8 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through H of this part.

§ 1416.9 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 parts 792 and 1403 of this title apply to payments made under subparts B through H 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 chapter.

§ 1416.10 Records and inspections thereof.

Producers receiving payments under the programs in subparts B through H or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through H 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 CCC 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 or 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.

§ 1416.11 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or
Commodity Credit Corporation, USDA

§ 1416.102 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, equine, poultry, elk, reindeer, sheep, goats, swine or deer;
§ 1416.103 Application process.

(a) Applicants must submit to CCC:
(1) A completed application in accordance with §1416.5;
(2) Adequate proof, as determined by CCC, that the feed lost:
   (i) Was for the claimed eligible livestock;
   (ii) Occurred as a direct result of the eligible hurricane during the disaster period; and
   (iii) Had a value, as determined by CCC, equal to or greater than the amount calculated in accordance with §1416.104(a); and
(4) Any other supporting documentation as determined by CCC to be necessary to make a determination of eligibility of the applicant. 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.

(b) [Reserved]

§ 1416.104 Payment calculation.

(a) LCP payments are calculated by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock 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 CCC. Adjustments shall be applied in accordance with paragraph (b) of this section and §1416.105;

(b) The LCP payment calculated in accordance with paragraph (a) of this section shall be reduced by the amount the applicant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of part 760 of this title.

(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.

§ 1416.105 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart and subpart I of this part exceeds $95 million, each payment shall be reduced by a uniform national percentage, as determined by CCC;

(b) Such payment reduction shall be applied after the imposition of per-person payment limitations as provided in §1416.6.
§ 1416.200 Applicability.
(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program II (LIP–II).
(b) Eligible livestock owners and contract growers will be compensated in accordance with §1416.205 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible hurricane during the disaster period.

§ 1416.201 Definitions.
The following definitions are applicable for all purposes of administering LIP–II.

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 were 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.

Agricultural operation means a farming operation.

Application means the “2005 Hurricanes Livestock Indemnity Program II Application” form.

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.

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 practically be controlled with structures, facilities, growing media (including but not limited to water and nutrients) by the producer, is in fact controlled by the producer.

Crawfish means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Disaster period means the applicable disaster period as set forth in §1416.2.

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 deter-
mined by CCC.

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 omnivo-
rous pigs, hogs, and boars. Swine will
be further delineated by sex and weight
as determined by CCC.

§ 1416.202 Eligible owners and con-
tract growers.

(a) To be considered eligible, a live-
stock owner must have had legal own-
ership of the eligible livestock, as pro-
vided in §1416.203(a), on the day the
livestock died.

(b) To be considered eligible, a con-
tact 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 obliga-
tions of the parties involved regarding
the production of livestock; and

(2) Control of the eligible livestock,
as provided in §1416.203(b), on the day
the livestock died.

§ 1416.203 Eligible livestock.

(a) To be considered eligible live-
stock for eligible livestock owners,
livestock:

(1) In any county provided in
§1416.2(d) that was an eligible county
in accordance with 7 CFR 760.101, must
meet all the following:

(i) Be catfish or crawfish as defined
in §1416.201;

(ii) Died in an eligible county as a di-
rect result of an applicable hurricane
during the disaster period;

(iii) Been maintained for commercial
use as part of a farming operation on
the day they died; and

(iv) Before dying, not have been pro-
duced or maintained for reasons other
than commercial use as part of a farm-
ing operation, including but not lim-
ited to wild free roaming animals or
animals used for recreational purposes,
such as pleasure, hunting, pets, or for
show.

(b) To be considered eligible live-
stock for eligible contract growers,
livestock must meet all the following:

(1) Be poultry as defined in §1416.201;

(2) Died in an eligible county pro-
vided in §1416.2(d) that was not an eli-
gible county as provided in 7 CFR
760.101;

(3) Died as a direct result of an eligi-
ble hurricane during the applicable dis-
aster period as set forth in §1416.2;

(4) Been maintained for commercial
use as part of a farming operation on
the day they died; and

(5) Before dying, not have been pro-
duced or maintained for reasons other
than commercial use as part of a farm-
ing operation, including but not lim-
ited to wild free roaming animals or
animals used for recreational purposes,
such as pleasure, hunting, pets, or for
show.

(c) No producer may receive duplica-
tive payments under this subpart and
any other Federal program for the
same loss. Except catfish and crawfish,
livestock that died in any county set
forth in §1416.2(d) that was an eligible
county under §760.101 of this title are
not eligible livestock under this sub-
part.

§ 1416.204 Application process.

(a) Applicants must submit to CCC a
completed application in accordance
with §1416.5, a copy of their grower contract if the applicant is a contract grower, and other supporting documents necessary for determining 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 in an eligible county as a direct result of an eligible hurricane during the disaster period. The quantity and kind of livestock that died as a direct result of the eligible hurricane 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 CCC.

(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 determined by the Deputy Administrator, were in inventory at the time the applicable hurricane occurred;
   (iii) Other details necessary for CCC 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 necessary for CCC to determine the certification acceptable.

§1416.205 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. LIP–II payments 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 paragraphs (f), (g) and (h) of this section. Adjustments shall be applied in accordance with paragraphs (d) and (e) of this section and §1416.206.

(b) The LIP–II national payment rate for eligible livestock owners is based on 30 percent of the average fair market value of the livestock.

(c) The LIP–II national payment rate for eligible livestock contract growers is based on 30 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The payment calculated for eligible livestock owners shall be reduced by the amount the applicant received for the specific livestock under:

(1) Subpart E of Part 760 of this title, the Livestock Indemnity Program;
(2) Subpart G of Part 760 of this title, the Aquaculture Program; and
(3) Part 1437 of this chapter, the Non–insured Crop Disaster Assistance Program.

(e) The payment calculated for eligible livestock contract growers shall be reduced by the amount the applicant received for the specific livestock:

(1) Under the Livestock Indemnity Program under Subpart E of Part 760 of this title; and
(2) From the party who contracted with the producer to grow the livestock for the loss of income from the dead livestock.

(f) The categories of eligible livestock in any county provided in §1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock contract growers are as follows:

(1) Chickens, layers, roasters;
(2) Chickens, broilers, pullets;
(3) Chickens, chicks;
(4) Turkeys, toms, fryers, roasters;
(5) Turkeys, pouls.
(6) Ducks;
(7) Ducks, ducklings;
(8) Geese, goose; and
(9) Geese, gosling.

(g) The categories of eligible livestock in any county provided in §1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock owners 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, pouls;
(25) Ducks;
(26) Ducks, ducklings;
(27) Geese, goose;
(28) Geese, gosling;
(29) Catfish;
(30) Crawfish; and
(31) Equine.

(h) The categories of eligible livestock in any county provided in §1416.2(d) that was an eligible county according to 7 CFR 760.101 for eligible livestock owners are as follows:
(1) Catfish; and
(2) Crawfish.

§ 1416.206 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible livestock owners under this subpart exceeds $30 million, each payment to eligible livestock owner shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after the imposition of the applicable per-person payment limitations in §1416.6.

Subpart D—Citrus Disaster Program

§ 1416.300 Applicability.

This subpart sets forth the terms and conditions applicable to the Citrus Disaster Program.

§ 1416.301 Definitions.

Citrus means eligible citrus types that are those listed within the Risk Management Agency (RMA) Florida Citrus Fruit Crop Provisions.

Grove means contiguous acreage of the same citrus crop.

§ 1416.302 Eligible crops and producers.

(a) A producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the citrus crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Producers that did not market citrus in both 2004 and 2005 are not eligible, except producers with groves that will be of fruit-bearing age for 2006, but were too immature to produce marketable fruit in 2004 or 2005.

(b)(1) Citrus producers will be reimbursed on a per-acre basis for each eligible grove. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates by CCC considering levels of loss correlating to the severity of damage caused by maximum sustained winds of the hurricane. The levels of damage that will determine payment rates are as follows:

Tier I—75 percent or greater crop loss and associated tree damage.

Tier II—50 to 74 percent crop loss and associated tree damage/loss.

Tier III—35 to 49 percent crop loss and associated tree damage/loss.

Tier IV—15 percent and greater associated tree damage only.

(b)(2) Citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related cleanup and rehabilitation...
costs, must provide to CCC a certified statement on a CCC-approved form of the level of destruction, the number of acres in the disaster-affected grove, and the geographic location of the losses.

(c) If the actual level of loss is greater than the level of loss associated with the tier based on the location of the grove, the applicant may submit documentation to CCC to request the grove be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the level of loss incurred, the grove can only be placed in the next lower-numbered tier.

(d) If the actual level of loss is less than the tier associated with the location band for the grove, the producer shall certify to the lower loss level, which must be 15 percent or more, on the application and a lower payment rate will be used by CCC based upon the tier rate associated with the lower loss level.

§ 1416.303 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to §1416.5.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible citrus crops were a direct result of the hurricane, in accordance with §1416.2.

§ 1416.304 Payment calculations.

(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the producer’s share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the citrus acres planted in the grove. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Producers with insurance or NAP coverage</th>
<th>Producers without insurance or NAP coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>1,500</td>
<td>1,425</td>
</tr>
<tr>
<td>II</td>
<td>1,000</td>
<td>950</td>
</tr>
<tr>
<td>III</td>
<td>600</td>
<td>570</td>
</tr>
<tr>
<td>IV</td>
<td>100</td>
<td>95</td>
</tr>
</tbody>
</table>

(b) The percentages of the payment for citrus crops that are subject to the payment limitation and AGI provisions are:

Tier I—55 percent
Tier II—60 percent
Tier III—64 percent
Tier IV—0 percent

(c) The percentages of the payment for citrus crops that are not subject to the payment limitation and AGI provisions are:

Tier I—45 percent
Tier II—40 percent
Tier III—36 percent
Tier IV—100 percent

§ 1416.305 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible citrus producers under this subpart and subparts E, F, and G of this part exceeds $95 million, each payment to an eligible citrus producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in §1416.6.
Subpart E—Fruit and Vegetable Disaster Program

§ 1416.400 Applicability.
This subpart sets forth the terms and conditions applicable to the Fruit and Vegetable Disaster Program.

§ 1416.401 Definitions.
Other than plasticulture means conventional row-cropped fruits and vegetables, and those crops that are double cropped on a previous crop’s or season’s plastic.

Plasticulture means production practices where the soil has been bedded, fumigated, fertilized, an irrigation system installed, and covered with plastic mulch.

Specialty crop means any commercially grown fruit or vegetable eligible for crop insurance or NAP coverage.

§ 1416.402 Eligible fruit and vegetable producers.
(a) Producers of fruits and vegetables utilizing “plasticulture”, and “other than plasticulture” production practices are eligible for assistance. Producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Payments will be made on a per-acre basis, and are based on tiers and the severity of destruction as specified for citrus crops and the type of production practice.
(b) Producers must have at least a 35 percent loss in production, or a 15 percent or more associated crop damage. Producers must also document that the necessary materials and procedures were followed to produce vegetables using plasticulture or other than plasticulture.
(c)(1) Fruit and vegetable producers will be reimbursed on a per-acre basis for eligible acreage. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates developed by CCC. Estimates take into account levels of loss generally correlating to the severity of damage caused by maximum sustained winds of the applicable hurricanes. The levels of damage that will determine payment rates are as follows:
Tier I—75 percent or greater crop and/or yield loss
Tier II—50 to 74 percent crop and/or yield loss
Tier III—35 to 49 percent crop and/or yield loss
Tier IV—15 percent or more crop and/or field damage
(2) Fruit and vegetable producers who suffered crop production losses and associated crop damage, including related cleanup, must provide to CCC a certified statement on a CCC approved form of the level of destruction, the number of the disaster affected acres, and the geographic location of the losses.
(d) If the actual level of loss is greater than the tier associated with the location of the acreage, the applicant may submit documentation to CCC to request the acreage be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate.
(e) If the actual level of loss is less than the tier associated with the location of the acreage, the producer shall certify to the lower loss level on the application and a lower payment rate will be used by CCC based upon the tier rate associated with the lower loss level.

§ 1416.403 Application process.
(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to § 1416.5.
(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible fruit and vegetable crops were a direct result of the applicable disaster, as set forth in § 1416.2.

§ 1416.404 Payment calculations.
(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the
producer’s share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the planted fruit and vegetable acres. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Plasticulture</th>
<th>Other than plasticulture</th>
<th>Plasticulture</th>
<th>Other than plasticulture</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$3,750</td>
<td>$1,125</td>
<td>$3,560</td>
<td>$1,070</td>
</tr>
<tr>
<td>II</td>
<td>2,500</td>
<td>750</td>
<td>2,375</td>
<td>710</td>
</tr>
<tr>
<td>III</td>
<td>1,500</td>
<td>450</td>
<td>1,425</td>
<td>425</td>
</tr>
<tr>
<td>IV</td>
<td>250</td>
<td>75</td>
<td>235</td>
<td>70</td>
</tr>
</tbody>
</table>

(b) The percentage of the payment for fruit and vegetable crops that are subject to the payment limitation and AGI provisions are:

Tier I—94.6667 percent
Tier II—94 percent
Tier III—93.3333 percent
Tier IV—0 percent

(c) The percentage of the payment for fruit and vegetable crops that are not subject to the payment limitation and AGI provisions are:

Tier I—5.3333 percent
Tier II—6 percent
Tier III—6.6667 percent
Tier IV—0 percent

(d) In addition to the prohibition in §1416.6(g), a producer may not receive duplicate benefits under this subpart and subpart H of this part, the 2005 Hurricanes Tree Assistance Program.

Subpart F—Tropical Fruit Disaster Program

§1416.500 Applicability.

This subpart sets forth the terms and conditions applicable to the Tropical Fruit Disaster Program.

§1416.501 Definitions.

Tropical Fruit means carambola, longan, lychee, and mangos for disaster program purposes.

§1416.502 Eligibility requirements.

(a) Eligible Tropical Fruit producers must have incurred 50 percent or greater loss in commercial production.

(b) Only those acres of the four eligible fruits located in Tier I or II as designated under §1416.2 shall be considered for payment under this subpart.

§1416.503 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed as provided in §1416.5. Applications will not be accepted after such date as announced by FSA. Applications for assistance are available at local FSA Service Centers.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible tropical fruit crops were a direct result of the applicable disaster, as set forth in §1416.2.
§ 1416.504 Payment calculation.

(a) Payments are calculated by multiplying the number of affected acres by the payment rate times the producer’s share of the crop. The payment rate for insured or NAP covered tropical fruit is a flat rate of $5000 per acre. The rate for uninsured or acreage without NAP coverage is $4750 per acre. The total payment is subject to the limitations in §1416.6.

(b) In addition to the prohibition in §1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, Hurricane TAP, for the same loss.

§ 1416.505 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible tropical fruit producers under this subpart and subparts D, E, and G exceeds $95 million, each payment to an eligible tropical fruit producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in §1416.6.

Subpart G—Nursery Disaster Program

§ 1416.600 Applicability.

This subpart sets forth the terms and conditions applicable to the Nursery Disaster Program.

§ 1416.601 Eligibility requirements.

(a) Commercial ornamental nursery and fernery producers are eligible for assistance for inventory losses for each nursery or fernery operation and cleanup costs. For a nursery to be considered a commercial nursery, it must be certified by the appropriate state agency. Eligible producers include producers of the following types of nursery stock and such stock as announced by CCC:

1. Deciduous shrubs, broadleaf evergreens, coniferous evergreens, shade and flowering trees.

2. Stock for use as propagation in a commercial ornamental nursery operation.

3. Fruit or nut seedlings grown for sale as seed stock for commercial orchard operations growing fruit or nuts.

(b) Eligible nursery inventory does not include:

1. Edible varieties.

2. Plants produced for reforestation purposes or for the purpose of producing a crop for which RMA does not provide insurance, or for which CCC does not provide assistance under NAP.

(c) Losses will be determined on an individual-nursery basis. Production loss from one nursery will not be offset by production from another nursery operated by the same applicant.

§ 1416.602 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location, number of acres in the disaster-affected area, the inventory value before the hurricane, and the inventory value after the hurricane to their local FSA Service Center at the time an application for payment is being filed as provided in §1416.5. The value of the inventory is the producer’s wholesale price list, less the maximum customer discount they provide, not to exceed the prices in RMA’s “Eligible Plant List and Price Schedule.”

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible nursery crops were a direct result of the applicable hurricane during the disaster period.

§ 1416.603 Payment calculations.

(a) Payments are calculated by multiplying the difference between the beginning and ending inventory value times 25 percent times the producer’s share of the loss. The payment for production loss is subject to the payment limitation and AGI provisions.

(b) Producers are also eligible for a payment of $250 per acre for debris removal and associated costs from hurricane damage if they can document that these costs were equal to or greater than $250 per acre. None of the payment for cleanup is subject to the payment limitation and AGI provisions.
(c) In addition to the prohibition of § 1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, the Hurricane TAP, for the same loss.

§ 1416.604 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible nursery producers under this subpart and subparts D, E, and F exceeds $95 million, each payment to an eligible nursery producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

Subpart H [Reserved]

Subpart I—2005 Catfish Grant Program

§ 1416.800 General.

(a) CCC will administer a limited program to provide assistance to catfish producers in eligible counties. Under the Catfish Grant Program, CCC will provide grants to the State governments of States where eligible counties are located. The amount of each grant will be based on the total value of the catfish feed loss suffered in every eligible county in the subject state as determined by CCC. Available grant funds under this subpart and funds under subpart B of this part will be uniformly prorated to ensure that available funding is not exceeded. Catfish producers in eligible counties who suffered at least a 30-day catfish feed loss may be eligible for these funds. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed $80,000, except for general partnerships and joint ventures, in which case assistance shall not exceed $80,000 times the number of members that constitute the general partnership or joint venture.

(b) No producer may receive duplicate payments under this subpart and any other Federal programs for the same loss.
Subpart E—Designated Marketing Associations for Peanuts

1421.400 Applicability and abbreviations.
1421.401 DMA responsibilities.
1421.402 DMA eligibility to process loans and loan deficiency payments.
1421.403 DMA approval.
1421.404 Financial security.
1421.405 Liability.
1421.406 Reporting requirements.
1421.407 Suspension and termination.
1421.408 Prohibited activity.
1421.409 Monitoring payment limitations.
1421.410 Recordkeeping requirements.
1421.411 Forms.
1421.412 Powers of attorney.
1421.413 Liens and waivers.
1421.414 Producer request to a DMA for a MAL or LDP.
1421.415 Processing marketing assistance loans.
1421.416 Processing loan deficiency payments.
1421.417 Disbursing MAL and LDP proceeds.
1421.418 Submitting MAL and LDP documentation to FSA.
1421.419 MAL or LDP servicing.
1421.420 Inspections and reviews.
1421.421 Appeals.


Subpart A—General

Source: 67 FR 63511, Oct. 11, 2002, unless otherwise noted.

§ 1421.1 Applicability and interest.

(a) The regulations of this subpart are applicable to the 2008 through 2012 crops of barley, small chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, wool, mohair, oilseeds and other crops designated by Commodity Credit Corporation (CCC). Additionally, large chickpeas are authorized for coverage for the 2009 through 2012 crop years. These regulations specify the general provisions under which marketing assistance loans (MAL) and loan deficiency payments (LDP) will be administered by CCC. Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and LDPs. In any case in which money must be refunded to CCC in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This will apply, unless waived by the Deputy Administrator, irrespective of any other rule.

(b)(1) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the marketing assistance and loan deficiency payment programs for the commodities specified in paragraph (a) of this section are available in Farm Service Agency (FSA) State and county offices. The forms for use in these programs will be prescribed by CCC.

(2) Loan deficiency payments shall be available for unshorn pelts, hay and silage.

(c) Marketing assistance loans and loan deficiency payments will not be available for any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Producers who produced eligible loan commodities are eligible for marketing assistance loans or loan deficiency payments.

7 CFR Ch. XIV (1–1–14 Edition)

§ 1421.2 Administration.

(a) The marketing assistance loan and loan deficiency payment program shall be administered under the general supervision of the Executive Vice President, CCC and shall be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and employees thereof, cannot modify or waive any requirement of this part, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

1. Correct or require correction of any action taken by a county committee that is not in compliance with this part; or
2. Require a county committee to not take an action or implement a decision that is not under the regulations of this part.
(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the marketing assistance loan and loan deficiency payment program.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

Administrative County Office is the FSA County Office where a producer’s FSA records are maintained.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

CCC means the Commodity Credit Corporation.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC’s or the producer’s interest in such commodity.

Chickpeas means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS).

Commodity certificate exchange means the exchange, as provided for in part 1401 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Control or Recording FSA County Office is the FSA County Office that controls subsidiary files for producers designated as multi-county producers.

Crop means with respect to a year, commodities harvested in that year. That is, a reference to the 2009 crop of a commodity means commodities that when planted were intended for harvest in calendar year 2009.

Crop year means any time relevant to the relevant crop for that year. Thus references to the 2009 crop year are used to include any activities relevant to the 2009 crop.

Current net worth ratio means current assets minus current liabilities, divided by current liabilities, based on the financial statement provided in connection with a DMA application or a recertification for DMA status.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) or a designee of that person.

DMA Service County Office is an FSA County Office designated by CCC to accept, process, and disburse bundled peanut MALs and LDPs to a DMA. In the absence of a centralized MAL and LDP processing system for peanuts, a service county FSA office is necessary for entering MALs and LDPs made by DMAs into CCC accounting systems.

Designated Marketing Association (DMA) means an entity, or a subsidiary thereof, that performs marketing functions for peanut producers and is designated to handle marketing assistance

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

Administrative County Office is the FSA County Office where a producer’s FSA records are maintained.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

CCC means the Commodity Credit Corporation.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC’s or the producer’s interest in such commodity.

Chickpeas means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS).

Commodity certificate exchange means the exchange, as provided for in part 1401 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Control or Recording FSA County Office is the FSA County Office that controls subsidiary files for producers designated as multi-county producers.

Crop means with respect to a year, commodities harvested in that year. That is, a reference to the 2009 crop of a commodity means commodities that when planted were intended for harvest in calendar year 2009.

Crop year means any time relevant to the relevant crop for that year. Thus references to the 2009 crop year are used to include any activities relevant to the 2009 crop.

Current net worth ratio means current assets minus current liabilities, divided by current liabilities, based on the financial statement provided in connection with a DMA application or a recertification for DMA status.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) or a designee of that person.

DMA Service County Office is an FSA County Office designated by CCC to accept, process, and disburse bundled peanut MALs and LDPs to a DMA. In the absence of a centralized MAL and LDP processing system for peanuts, a service county FSA office is necessary for entering MALs and LDPs made by DMAs into CCC accounting systems.

Designated Marketing Association (DMA) means an entity, or a subsidiary thereof, that performs marketing functions for peanut producers and is designated to handle marketing assistance
loans and loan deficiency payments for them. A DMA is eligible to perform those functions only if the DMA meets the eligibility criteria set out elsewhere in this part.

_Drawdown account_ is an account titled to the DMA at a financial institution and funded at the discretion of CCC for the purpose of allowing the DMA to advance funds to producers who have applied for MALs and LDPs before a subsequent MAL or LDP is made to the DMA by an assigned FSA county office.

_Electronic warehouse receipt (EWR)_ means a receipt electronically filed in a central filing system by an approved provider as provided in an executed, “Farm Service Agency Provider Agreement to Electronically File and Maintain Warehouse Receipts.”

_FSA_ means the Farm Service Agency of the United States Department of Agriculture.

_High moisture state_ means corn or grain sorghum having a moisture content in excess of CCC standards used to determine eligibility for marketing assistance loans made by the Secretary.

_Incorrect certification_ means the certifying of a quantity of a commodity for the purpose of obtaining a marketing assistance loan or a loan deficiency payment in excess of the quantity eligible for such marketing assistance loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

_Loan commodities_ means wheat, corn, grain sorghum, barley, oats, rice, soybeans, other oilseeds, peanuts, wool, mohair, dry peas, lentils, chickpeas, and other crops designated by CCC.

_Loan deficiency payment (LDP)_ means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

_Loan settlement_ means farm stored commodities delivered to CCC and warehouse stored commodities forfeited to CCC, effective with the 2009 through 2012 crop years.

_MAL_ means marketing assistance loan.

_Medium grain rice_ for the purposes of this part includes both short and medium grain rice as defined by the U.S. Standards for Rice.

_Mohair_ means the hair sheared from a live Angora goat. Mohair does not include pelts, or hides or mohair shorn from pelts or hides.

_Oilseeds_ means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as determined and announced by CCC.

_Other crops designated by CCC_ means with respect to eligibilities for benefits under this part:

1. Those crops harvested as other than grain, such as silage, haylage, earlage;
2. Specific crops designated for grazing; or
3. As otherwise designated by CCC.

_Pulse crops_ means any crop of dry peas, lentils, and chickpeas as defined by CCC.

_Rice_ means, unless otherwise noted, long grain rice and medium grain rice.

_Secretary_ means the Secretary of the United States Department of Agriculture, or the Secretary’s delegate.

_Security for DMAs_ means a certified or cashier’s check payable to CCC, an irrevocable commercial letter of credit in a form acceptable to CCC, a performance or surety bond conditioned on the DMA fully discharging all of its obligations under this part, or other form of financial security as CCC may deem appropriate.

_Servicing agent bank_ means the bank designated as the financial institution for a CMA or a designated marketing association.

_STC_ means the FSA State committee.

_Unauthorized disposition_ means the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee.

_Unauthorized removal_ means the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure, whether or not such structure is located on the producer’s farm, without prior written authorization from the county committee.

_Unshorn pelt_ means the removed skin and attached wool from a slaughtered lamb that has never been shorn.
Commodity Credit Corporation, USDA § 1421.4

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) A pre-numbered, negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt issued by such warehouse recorded in a central filing system or system maintained in one or more locations which are approved by FSA to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool.

§ 1421.4 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop. With respect to wool and mohair, the producer must own, other than through a security interest mortgage, or lien, the sheep and goats that produced the wool and mohair respectively for a period of not less than 30 days.

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(iii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iv) 7 CFR part 996—Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States;

(v) 7 CFR part 1400—Payment Limitation & Payment Eligibility for 2009 and Subsequent Crops, Programs, or Fiscal Years;

(vi) 7 CFR part 1402—Policy for Certain Commodities Available for Sale;

(vii) 7 CFR part 1403—Debt Settlement Policies and Procedures;

(viii) 7 CFR part 1405—Loans, Purchases, and Other Operations;

(ix) 7 CFR part 1412—Direct and Counter-Cyclical Program and Average Crop Revenue Election Program for the 2008 and Subsequent Crop Years; and

(x) 7 CFR part 1423—Commodity Credit Corporation Approved Warehouses.

(b) A receiver or trustee of an insolvent or bankrupt debtor’s estate, an executor or an administrator of a deceased person’s estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Marketing assistance loans and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive marketing assistance loans or loan deficiency payments only if the minor meets one of the following requirements:

(i) The right of majority has been conferred on the minor by court proceedings or by statute;

(ii) A guardian has been appointed to manage the minor’s property and the applicable marketing assistance loan or loan deficiency payment documents are signed by the guardian;

(iii) Any note or loan deficiency payment program application signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(iv) A bond is furnished under which a surety guarantees to protect CCC from...
§ 1421.5 Eligible commodities.

(a) Commodities eligible to be pledged as collateral for a loan made under this part are:

(1) Barley, corn, grain sorghum, oats, peanuts, soybeans, oilseeds, wheat, dry peas, lentils, chickpeas, rice and other crops designated by CCC produced and mechanically harvested in the United States;

(2) Dual purpose sorghum varieties as determined by CCC; and

(3) Wool and mohair produced and shorn from live animals in the United States.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

(c)(1) To be an eligible commodity, the commodity must be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. A commodity containing vomitoxin, aflatoxin, or Aspergillus mold may not be pledged for a loan made under this part, except as provided by CCC in the marketing assistance loan note and security agreement.

(2) The determination of eligibility for rice includes class, grade, grading factor, milling yields, and other quality factors and will be based upon the U.S. Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection.

(3) The determination of eligibility for peanuts includes type, quality, and quantity.

(4) With regard to barley, canola, corn, flaxseed, grain sorghum, oats,
Commodity Credit Corporation, USDA

§ 1421.6 Beneficial interest.

(a) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or is requested for a loan deficiency payment. For the purposes of this part, the term “beneficial interest” refers to a determination by CCC that a person has title to and control of the commodity that is tendered to CCC as collateral for a marketing assistance loan or of the commodity that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in a commodity is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(b) Except as provided in paragraph (e) of this section, when requesting a marketing assistance loan for a loan commodity, in order to have beneficial interest in the commodity tendered as collateral for the loan, a person must:

(1) Be the producer of the commodity as determined in accordance with §1421.4;

(2) Have had ownership of the commodity from the time it was planted (with respect to wool and mohair from time of shearing) through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the commodity from the time of planting (for wool and mohair from the time of shearing) through the maturity date of the loan. To have control of the commodity, such person must have complete decision-making authority regarding...
§ 1421.6

whether the commodity will be tendered as collateral for a loan, when the loan will be repaid, or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the commodity will be maintained during the term of the loan;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse authorized in accordance with §1421.103(c). Delivery of the commodity to a location other than to such an authorized warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, feed or grain bank, or other facilities as determined by CCC will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been authorized by CCC under §1421.103(c).

(d) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), in order to facilitate handling situations involving the death of a producer, CCC will consider an estate, heirs of the deceased producer, and a person to whom title to a commodity has passed by virtue of State law upon the death of the producer to have beneficial interest in a commodity produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(e) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), a person who purchases or otherwise acquires a commodity from a producer under any circumstances does not obtain beneficial interest to the commodity whether such purchase or acquisition is made prior to the harvest of the crop or after harvest; however, CCC will consider a person to have beneficial interest in a commodity if, prior to harvest, such person has obtained title to the growing commodity at the same time that

568
§ 1421.6

such person obtained full title to the land on which such crop was growing:

(f) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

(g) A producer will lose beneficial interest in a commodity if the producer receives any payment from any person under any contractual arrangement with respect to a commodity if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the commodity or control of the commodity prior to or after harvest, shearing, or slaughter unless:

1. Such payment is authorized in accordance with part 1425 of this chapter; or
2. The date CCC claims title to such commodity; or
3. Such other date as provided in this option.

(h) Inclusion in a contract of one or more of the following types of provisions will not result in the loss of beneficial interest in a commodity:

1. A provision that allows the producer to select the sales price of the commodity at a time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred-price, forward or price later contract. The following conditions apply:
   (1) Producers under a deferred-price, forward, or price later contract will lose beneficial interest in the commodity the earlier of receipt of any payment or once the commodity is applied in fulfillment of the delivery requirements of such a contract.
   (2) Beneficial interest in the commodity is retained by the producer if the contract has no restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity.

2. A provision between the producer and a warehouse authorized in accordance with §1421.103(c) for the storage of CCC loan collateral that provides the producer a period of time following the date of physical delivery of the commodity to elect whether the commodity is to be stored and receipted on behalf of the producer or is to be considered transferred to the warehouse if CCC determines such a provision is required.

(i) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan or a loan deficiency payment may be made with respect to such production if, at the time of the request for such a loan or LDP, the producer has not:
   (1) Received a payment under the contract; or
§ 1421.7 Requesting marketing assistance loans and loan deficiency payments.

(a) A producer must, unless authorized by CCC, request marketing assistance loans and loan deficiency payments at the county office that, under part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced.

(b) A marketing assistance loan or loan deficiency payment may be requested in person, by mail or electronic format designated by CCC. Forms prescribed by CCC may be obtained from the USDA, Farm Service Agency Web site.

(c) To receive marketing assistance loans or loan deficiency payments for an eligible commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before the applicable final loan availability date, as follows:

(1) March 31 of the year following the year in which the following crops are normally harvested: barley, canola, flaxseed, oats, rapeseed, crambe, sesame seed, and wheat.

(2) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, sunflower seed, dry peas, lentils, and chickpeas.

(3) January 31 of the year following the year in which peanuts are normally harvested or wool and mohair are normally sheared.

§ 1421.8 Eligible quantity.

(a) With respect to marketing assistance loans and loan deficiency payments for:

(1) Farm-stored commodities, all determinations of weight, and quality, except as otherwise agreed to or required by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed for measured requests, if applicable or selected for spot-check for certified requests.

(2) Warehouse-stored commodities, all determinations of grade, weight and quality, except as otherwise agreed to or required by CCC, shall be determined at the time the loan or LDP is requested when acceptable documentation, under §§1421.9, 1421.106, and 1421.107 as applicable accompanies the loan or LDP request.

(b)(1) A producer may, before the final loan availability date for obtaining a marketing assistance loan for a commodity, repledge as collateral for securing a marketing assistance loan any commodity that had been previously pledged as collateral for a marketing assistance loan, except with respect to:

(i) Commodities that have been acquired with commodity certificate exchanges under part 1401 of this chapter;

(ii) Commodities that have been redeemed at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as determined by CCC.

(iii) Commodities on which a loan deficiency payment has been received.

(2) The commodity repledged as security for the subsequent loan shall have the same maturity date, under §1421.101 as the original loan.

(c)(1) The marketing assistance loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible harvested commodity, is in existence, and is in authorized farm or warehouse storage, as determined by CCC. If the commodity was not either an eligible commodity, in existence, or in authorized storage at the time of disbursement, the total amount disbursed under the marketing assistance loan and charges plus interest shall be refunded promptly by the producer.

(2) CCC shall limit the total marketing assistance loan quantity for a loan disbursement, or loan deficiency payment quantity for a loan deficiency payment, based on a subsequent increase in the quantity of an eligible

7 CFR Ch. XIV (1–1–14 Edition)
commodity by the final loan availability date to 100 percent of the outstanding quantity of such marketing assistance loan or loan deficiency payment application. A producer may obtain a separate marketing assistance loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are otherwise eligible.

§ 1421.9 Basic loan rates.

(a) Basic marketing assistance loan rates for a commodity may be established on a National, State, regional, county basis or other basis, will be at rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, location and other factors applicable to the commodity and as otherwise provided in this section.

(b) The basic marketing assistance loan rates for wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, dry peas, lentils, chickpeas, crambe, sesame seed, wool, mohair and other crops designated by CCC will be determined by CCC and made available to State and county offices.

(c)(1) Subject to adjustment under paragraph (g) of this section in case of forfeiture, for all 2009 through 2012 crop year commodities, except rice and peanuts, warehouse-stored loans will be disbursed at levels based on the basic county marketing assistance loan rate for the county where the commodity is stored. For the 2008 crop year only, warehouse-stored loans will be disbursed at levels based on the basic county marketing assistance loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of grade, type, and quality factors set forth on warehouse receipts or supplemental certificates and for other factors, as determined and announced by CCC.

(2) Subject to adjustment under paragraph (g) of this section in case of forfeiture, for 2009 through 2012 crop years rice, warehouse-stored loans will be disbursed at levels based on the milling yields times the whole and broken kernel marketing assistance loan rates. For the 2008 crop year of rice only, warehouse-stored loans will be disbursed at levels based on the milling yields times the whole and broken kernel marketing assistance loan rates, adjusted for the schedule of discounts on the basis of grade and quality factors set forth on warehouse receipts or supplemental certificates and for other factors, as determined and announced by CCC.

(d) The Secretary will establish a single loan rate in each county for each kind of other oilseeds, such as but not limited to, sunflower, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as designated by the Secretary.

(e) Adjustments by the Secretary to establish loan rates for loan commodities, except rice, on a county basis will not be lower than 95 percent of the national average loan rate, if those loan rates do not result in an increase in outlays. Adjustments in this section will not result in an increase in the national average loan rate for any year.

(f) For the 2009 through 2012 crops, producers on farms in the Acreage Crop Revenue Election program under part 1400 of this title will receive a 30 percent reduction in loan rate as established under this section for all loan commodities from the farm, except honey, wool, and mohair.

(g) For the 2009 through 2012 crop years, premiums and discounts will not be applicable for all eligible loan commodities, except for peanuts, at loan disbursement; however, premiums and discounts will apply if the eligible loan commodities are forfeited and delivered to CCC and any deficiency must be repaid to CCC.

§ 1421.10 Loan repayment rates.

(a) For the 2008 through 2012 crops of barley, corn, grain sorghum, oats, wheat, dry peas, lentils, chickpeas, oilseeds, wool, mohair, and other crops as designated by CCC (other than peanuts, long grain rice, medium grain rice, and confectionery and each other kind of sunflower seed (other than oil sunflower seed)), a producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(1) The loan rate established for the commodity under § 1421.9, plus interest;

(2) A rate (as determined by the Secretary) that is calculated based on average market prices for the loan commodity during a preceding 30-day period and that the Secretary has determined will minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries; or

(3) A rate that the Secretary may develop using alternative methods for calculating a repayment rate for a loan commodity that the Secretary determines will: Minimize potential loan forfeitures; minimize the accumulation of stocks of the commodity by the Federal Government; minimize the cost incurred by the Federal Government in storing the commodity; allow the commodity produced in the United States to be marketed freely and competitively, both domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

(b) To the extent practicable, CCC will determine and announce repayment rates under paragraphs (a)(2) and (a)(3) of this section based upon market prices at appropriate U.S. markets as determined by CCC and these repayment rates may be adjusted to reflect grade, type, quality, location, and other factors for each crop of a commodity as follows:

(1) On a weekly basis in each county for oilseeds, except canola, flaxseed, soybeans, and sunflower seed;

(2) On a daily basis in each county for barley, canola, corn, flaxseed, grain sorghum, oats, soybeans, sunflower seed and wheat; and

(3) On a weekly basis regionally for dry peas, lentils, chickpeas, wool and mohair.

(c)(1) For the 2008 through 2012 crops of peanuts, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(i) The loan rate established for the commodity under § 1421.9, plus interest; or

(ii) A rate that the Secretary determines will: Minimize potential loan forfeitures; minimize the accumulation of stocks of the commodity by the Federal Government; and allow the commodity produced in the United States to be marketed freely and competitively, both domestically and internationally.

(2) To the extent practicable, CCC will determine and announce weekly alternative repayment rates for peanuts.

(d) For the 2008 through 2012 crop of peanuts, the Secretary will require the repayment of handling and other associated costs under §1421.104 for all peanuts pledged as collateral for a loan that are redeemed under this section.

(e) The Secretary will permit producers to repay a marketing assistance loan for long grain rice and medium grain rice at a rate that is the lesser of:

(1) The loan rate established for the commodity under §1421.9, plus interest; or

(2) The prevailing world market price for the commodity, as determined and adjusted by the Secretary in accordance with this section.

(f) For purposes of this section, the Secretary will prescribe—

(1) A formula to determine the prevailing world market price for long grain rice and medium grain rice and

(2) A mechanism by which the Secretary will announce periodically those prevailing world market prices.

(g) Adjustments will be made to the prevailing world market price for long grain rice and medium grain rice.

(1) The prevailing world market price for long grain and medium rice determined under paragraph (f) of this section will be adjusted to U.S. quality and location.

(2) In making adjustments under this subsection, the Secretary will establish a mechanism for determining and announcing the adjustments in order to
avoid undue disruption in the U.S. market.

(h)(1) The prevailing world market price for a class of rice will be determined by CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and will be expressed in U.S. equivalent values F.O.B. (free on board) vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;
(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and
(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(2) Export transactions involving rice and all other related market information will be monitored on a continuous basis. Relevant information may be obtained for this purpose from USDA field reports, international organizations, public or private research entities, international rice brokers, and other sources of reliable information.

(3) The prevailing world market price for a class of rice adjusted to U.S. quality and location, the adjusted world price (AWP), as determined under paragraph (h)(5) of this section, will apply to this section.

(4) The adjusted world price for each class of rice will equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined under paragraphs (h)(1) and (h)(2) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice will be adjusted to reflect an F.O.B. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to F.O.B. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking charges, storage, and administrative costs.

(ii) The price determined under paragraph (h)(4)(i) of this section will be adjusted to reflect the market value of the total quantity of whole kernels contained in milled rice by deducting the world market value of broken kernels it contains, with the value of the broken kernels determined by multiplying a formulaic quantity of broken kernels (4 percent per hundredweight) by the world market value of broken kernels. The world market value of broken kernels will be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined under paragraph (h)(4)(ii) of this section will be adjusted to reflect the per-pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96 percent per hundredweight).

(iv) The price determined under paragraph (h)(4)(iii) of this section will be adjusted to reflect the per-pound market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined under paragraph (h)(4)(iv) of this section will be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(1) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(2) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice; and

(B) Deducting from such price an estimated cost of transporting rough rice from farm to mill locations.
(5) The adjusted world price for each class of rice, loan rate basis, will be determined by CCC and announced, to the extent practicable, on or after 7 a.m. Eastern Standard Time each Wednesday or more frequently as determined necessary by CCC, continuing through the later of:
   (i) The last Wednesday of July in the year in which the crop rice loan matures;
   (ii) The last Wednesday of the latest month the crop rice loans mature, or
   (iii) In the event that Tuesday is not a normal business day, the determination may be made on the next work day, on or after 7 a.m. Eastern Standard Time.

(i) The producer may repay a marketing assistance loan under this section for confectionery and each other kind of sunflower seed (other than oil sunflower seed) at a rate that is the lesser of:
   (1) The loan rate established for the commodity under §1421.9, plus interest, or
   (2) The repayment rate established for oil sunflower seed.

(j)(1) On a form prescribed by CCC, a producer may request to lock in the applicable repayment rate for a period of 60 calendar days or for the remaining life of the loan term, whichever is less, provided that no request may be granted within 14 calendar days of the end of the loan.

(2) The request to lock in the applicable repayment rate must be received in the FSA county service center that disbursed the loan.

(3) The repayment rate that is locked in will be the rate in effect when the request to lock in is approved.

(4) The repayment rate may be locked in on outstanding farm-stored or warehouse-stored loans.

(5) The repayment rate that is locked in will expire as provided in paragraph (j)(1) of this section.

(6) The requests can only be completed one time for a designated quantity.

(7) The requests can be made in person or by facsimile.

(8) The requests cannot be canceled, terminated, or changed after approval.

(9) The locked in applicable repayment rate will not transfer to any loan disbursed outside of the originating county where the commodity was stored.

(10) Once a repayment rate is locked in it cannot be extended.

(k) If a producer fails to repay a marketing assistance loan within the time prescribed by CCC under the terms and conditions of the request to lock in a market loan repayment rate, the producer may repay the loan:
   (1) On or before maturity, at the lesser of:
       (i) Principal plus interest as determined by CCC; or
       (ii) The repayment rate in effect on the day the repayment is received in the FSA County Service Center.
   (2) After maturity, at principal plus interest.

(l) When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval on a CCC-approved form and comply with the terms and conditions of such form, to remove a specified quantity of the commodity from storage. Approval does not constitute release of CCC’s security interest in the commodity or release of producer liability for amounts due CCC for the marketing assistance loan indebtedness if payment in full is not received by the county office. Failure to repay a marketing assistance loan within the time period prescribed by CCC in the case of a farm-stored loan and delivery of the pledged collateral to a buyer is a violation of the agreement. In the case of such violation, the producer must repay the loan principal and interest or another amount as determined by the Deputy Administrator, FSA, as specified in §1421.109.

(m) The producer may obtain county committee approval of a release of all or part of pledged collateral for a warehouse-stored loan at or before the maturity of such loan by paying to CCC:
   (1) The principal amount of the marketing assistance loan and charges plus interest or
   (2) An amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the collateral for such loan.
Commodity Credit Corporation, USDA

§ 1421.13

(n) A partial release of marketing assistance loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the marketing assistance loan must be released only to the producer. However, such receipt may be released to persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(o) The note and security agreement will not be released until the marketing assistance loan has been satisfied in full.

(p)(1) If the commodity is moved from storage without obtaining prior approval to move such commodity, such removal will constitute unauthorized removal or disposition, as applicable under §1421.109(b), unless the removal occurred on a non-workday and the producer notified the county office on the next workday of such removal.

(2) Any loan quantities involved in a violation of §1421.109 must be repaid under §1421.109(e).

(q) In the event of a severe disruption to marketing, transportation, or related infrastructure, the Secretary may modify the repayment rate otherwise applicable under this section for marketing assistance loans. Any adjustment made to the repayment rate for marketing assistance loans for a loan commodity under §1421.5 will be in effect on a short-term and temporary basis, as determined by the Secretary.

§ 1421.12 Production evidence.

(a) Producers who redeem marketing assistance loan collateral at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as CCC determines or receives a loan deficiency payment may be required to provide CCC with:

(1) Evidence of production of the collateral such as:

(i) Evidence of sales,

(ii) Delivery evidence,

(iii) Load summaries from warehouse, processor, or buyer,

(iv) Warehouse receipts

(v) Paid measurement service

(vi) Spot check measurements with paid measurement service

(vii) Cleaning tickets for seed

(viii) Scale tickets, if not issued by the producer for the producer’s own production

(ix) Core tests for wool and mohair

(x) Maximum eligible quantity as determined by CCC

(2) The storage location of the collateral that has not been otherwise disposed of and access to such collateral;

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity;

(4) In the case of wool and mohair, permission to examine and inspect the sheep herd; and

(5) Any other evidence requested by the county FSA service center or the Deputy Administrator, FSA.

(b) A producer who fails to provide acceptable evidence of production shall be required to repay the market gain or loan deficiency payment and charges, plus interest, as determined by CCC.

§ 1421.13 Special loan deficiency payments.

(a)(1) Eligible producers of unshorn pelts produced from live sheep and hay and silage derived from an eligible loan commodity as provided in §1421.5 are eligible to request unshorn pelt, hay,
and silage quantities for a loan deficiency payment under subpart C of this part.

(2) Unshorn pelts, hay, and silage derived from an eligible loan commodity are not eligible to be pledged as collateral to obtain a marketing assistance loan under subpart B of this part.

(71 FR 32424, June 6, 2006, as amended at 74 FR 15654, Apr. 7, 2009)

§ 1421.14 Obtaining peanut loans.

(a) Peanuts loans to individual producers may be obtained through:

(1) County offices; or

(2) A designated Marketing Association or a CMA approved by CCC.

(b) The loan documents shall not be presented for disbursement unless the peanuts pledged as collateral for the marketing assistance loan is eligible in accordance with §1421.8. If the peanuts were ineligible at the time of the disbursement, the total amount disbursed under loan, or as an LDP, plus charges and interest shall be refunded promptly.

Subpart B—Marketing Assistance Loans

Source: 67 FR 63511, Oct. 11, 2002, unless otherwise noted.

§ 1421.100 Applicability.

This subpart provides the terms and conditions for marketing assistance loans offered by CCC. Additional terms and conditions are also in the note and security agreement which the producer must sign to receive such marketing assistance loans.

§ 1421.101 Maturity dates.

(a)(1) All marketing assistance loans shall mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed and disbursed except, for transferred marketing assistance loan collateral. The maturity date for transferred marketing assistance loan collateral will be the maturity date applicable to the original loan that was transferred.

(2) CCC may at any time call the marketing assistance loan by notifying the producer at least 30 days in advance of the accelerated maturity date.


§ 1421.102 Adjustment of basic loan rates.

(a) Basic loan rates are established under §1421.9 and will be adjusted or not adjusted as follows:

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county marketing assistance loan rate.

(2) For farm-stored commodities where the test weight discounts are on the:

(i) Crop year specific schedules of premiums and discounts, the loan rate shall be adjusted for the higher of the discount for test weight or grade based on test weight.

(ii) Additional schedule of discounts, the marketing assistance loan rate shall be reduced to 20 percent of the county loan rate.

(3) With respect to commodities harvested, excluding silage or hay, as other than grain and pledged as collateral for a nonrecourse marketing assistance loan, the marketing assistance loan rate shall be discounted to 30 percent of the county loan rate.

(4) With respect to farm-stored wheat, the basic county loan rate shall not be adjusted to reflect the protein content.

(5) With respect to Segregation 2 and 3 peanuts as determined by CCC, the marketing assistance loan rate shall be discounted to 35 percent of the applicable loan rate.


§ 1421.103 Authorized storage.

(a) Authorized farm storage is:

(1) A storage structure located on or off the farm, (excluding public warehouses that do not enter into an agreement with CCC), that CCC determines to be controlled by the producer which affords safe storage of collateral pledged for a marketing assistance loan;

(2) If determined and announced to be available in a State or county, on
Commodity Credit Corporation, USDA § 1421.105

ground storage and other temporary storage structures approved by CCC.
(3) As determined by CCC, temporary authorized storage may also include:
(i) On-ground storage or;
(ii) Other storage arrangements.
(b) CCC may reduce the quantity of a commodity pledged as collateral for a loan made available under paragraph (a)(2) of this section to not more than 75 percent of such otherwise eligible quantity in order to protect the interests of CCC. CCC may also limit the length of time the commodity may be stored on-ground or in temporary structures to not more than 90 days. A marketing assistance loan made with respect to such commodity which is not moved to a structure specified in (a)(2) within 90 days of the date the loan was disbursed may be called by CCC.

(c)(1) Authorized warehouse storage consists of warehouses that:
(i) If Federally licensed, are in compliance with 7 CFR part 735 or
(ii) If not Federally licensed, are in compliance with State laws and that issue warehouse receipts that meet the criteria specified in §1421.107.
(iii) If not Federally licensed or in compliance with State Laws and issue warehouse receipts that meet the criteria specified in §1421.107, have entered into a storage agreement with CCC.
(2) Notwithstanding paragraph (c)(1) of this section, if storing peanuts, the warehouse must in all cases have entered into a storage agreement with CCC. For storing other crops, notwithstanding paragraph (c)(1) of this section, CCC may, on a case-by-case basis, still require a warehouse operator that would qualify under paragraphs (c)(1)(i) or (ii) of this section to enter into a storage agreement if deemed necessary by the Deputy Administrator to be needed to protect CCC’s interests.

§1421.104 Marketing assistance loan making.

(a)(1) CCC may conduct such lien searches, and may perfect its interest in loan commodities under State law, as it deems to be in its interest.

(2) The cost for terminating the financing statement for marketing assistance loans disbursed under this part before the end of the term shall be paid by the producer.
(3) If there are any liens or encumbrances on the commodity pledged as collateral for a marketing assistance loan made under this part, waivers that fully protect CCC’s interest must be obtained even though the liens or encumbrances are satisfied from loan proceeds disbursed under this part. No additional liens or encumbrances shall be placed on the commodity after such a loan is approved.

(b) Fees, charges, interest, and all applicable approved commodity assessment collections must be paid by the producer to CCC at a rate CCC determines or, in the case of assessments, at a rate approved by the assessment authority. Such fees, charges, and interest include:
(1) A non-refundable loan service fee;
(2) Interest that accrues on a loan under part 1405 of this chapter.

(c) For the 2008 through 2012 crop years, to ensure proper storage of peanuts for which a loan is made under this section, the Secretary will pay reasonable handling and other associated costs (other than storage) incurred at the time at which the peanuts are placed in a warehouse stored loan. Such rates will be available in the State and county FSA offices.

(d) The cost of terminating a financing statement shall be paid by the producer.


§1421.105 Farm-stored marketing assistance loans.

(a) The producer of a commodity pledged as security for a farm-storage loan shall:
(1) Certify the quantity of such commodity on the loan application, or;
(2) Have such quantity measured by CCC at the measurement service rate established by CCC.

(b) The State committee may establish a marketing assistance loan percentage not to exceed a percentage CCC establishes or it may apply quality discounts to the loan rate in each
§ 1421.105  
7 CFR Ch. XIV (1–1–14 Edition)  

year for each commodity on a State-wide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the marketing assistance loan percentage should be reduced below the maximum marketing assistance loan percentage or the quality discounts should be applied to the basic county marketing assistance loan rate to provide CCC with adequate protection. Marketing assistance loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions. Percentages established or loan rates adjusted for quality under this section shall apply only to new marketing assistance loans and not to outstanding marketing assistance loans. In determining loan percentages or the necessity to apply quality discounts, the State committee shall consider any factor at its discretion, including the following:  

(1) General crop conditions;  
(2) Factors affecting quality peculiar to an area within the State; and  
(3) Climatic conditions affecting storability.  

(c) An eligible quantity of a commodity that is commingled with an ineligible quantity of the commodity is not eligible to be collateral for a marketing assistance loan unless the producer, when requesting a marketing assistance loan designates all structures that may be used for storage of the marketing assistance loan collateral.

(1) In such cases, the producer is not required to obtain prior written approval from the county committee before moving marketing assistance loan collateral from one designated structure to another designated structure.  

(2) In all other instances, if the producer intends to move marketing assistance loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be written and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer’s expense, before commingling. Prior to commingling, with respect to wool and mohair, a representative of the county committee may determine an average production of the wool and mohair in a manner approved by CCC.

(d)(1) Two or more producers may obtain:

(i) A single joint marketing assistance loan for commodities that are stored in the same farm storage facility; or

(ii) Individual marketing assistance loans for their share of the commodity that is commingled in a farm storage facility with commodities owned by other producers if such other producers execute an agreement that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a marketing assistance loan shall be liable for any damage incurred by CCC for the deterioration or unauthorized removal or disposition of such commodities.

(2) In such cases, each producer must execute a note and security agreement with CCC, and each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the requirements of this part. Each producer is also liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to their share in the commodity pledged as collateral. In addition, such producer may not amend the note and security agreement for the producer’s claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) A producer, when requesting a marketing assistance loan, shall designate in writing specific storage structures.

(2) The producer is not required to request prior approval before moving
marketing assistance loan collateral between such designated structures.

(3) Movement of marketing assistance loan collateral to any other structures not designated or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to administrative actions.

(4) The producer is responsible for any loss in quantity or quality of the farm-stored commodity pledged as collateral.

(5) CCC shall not assume any loss in quantity or quality of the marketing assistance loan collateral for farm-stored loans.

§ 1421.106 Warehouse-stored marketing assistance loan collateral.

(a) A commodity may be pledged as collateral for a warehouse-stored marketing assistance loan in the quantity delivered to CCC for storage at a warehouse that meets standards for approval at part 1423 of this chapter. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) Two or more producers may obtain a single joint marketing assistance loan for commodities stored in an approved warehouse if the warehouse receipt pledged as collateral is issued jointly to the producers.

(c) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to such producer’s claimed share in the commodity pledged as collateral for the marketing assistance loan. In addition, such producer may not amend the note and security agreement with respect to the producer’s claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(d) Storage rates that CCC has approved to be deducted from marketing assistance loan proceeds are available in USDA State and county FSA service centers. Deductions shall be based upon entries on the warehouse receipt or supplemental certificate, but the storage rate shall not exceed the storage rate CCC has approved. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the commodity covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(e) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse; or

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(f) For hard red winter and hard red spring wheat tendered to CCC and stored in an approved warehouse, producers must obtain official protein content determinations or, as CCC determines is acceptable, protein content may be determined by mutual agreement between the producer and the warehouse operator. Costs of determinations shall not be paid by CCC.


§ 1421.107 Warehouse receipts.

(a) Warehouse receipts tendered to CCC under §1421.3 for marketing assistance loans must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of
§ 1421.107

the eligible producer, the receipt must be properly endorsed on its reverse side certifying that the crop is free of encumbrances in order for title to vest in the holder. Receipts must be issued by an authorized warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit.

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator’s commodity is invalid, the warehouse operator may offer the commodity to CCC for a marketing assistance loan if such warehouse is licensed under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an authorized warehouse must indicate that the commodity is insured. CCC shall not be responsible for the cost of such insurance.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, for rice, such receipt must also state the milling yield of the rice, and for wool, such receipts must also state the yield and micron of the wool.

(f) With respect to peanuts, a warehouse receipt must be submitted exhibiting grade, type, and segregation for peanuts tendered to CCC.

(g)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued by an authorized warehouse as specified in §1421.103(c)(1), as applicable, and must indicate:

(i) The name and location of the storing warehouse;
(ii) The warehouse code assigned by licensing authority;
(iii) The warehouse receipt number;
(iv) The date the receipt was issued;
(v) The type of commodity;
(vi) The date the commodity was deposited or received;
(vii) The date to which storage has been paid or the storage start date;
(viii) Whether the commodity was received by rail, truck or barge;
(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;
(x) The signature of the warehouse operator or the authorized agent; and
(xi) For warehouses operating under a merged warehouse code agreement (KC-385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (g)(1) of this section, additional commodity specific requirements shall be determined by CCC and be available at State and county offices and the Kansas City Commodity Office.

(h) If a warehouse receipt indicates that the commodity tendered for loan grades “infested” or “contains excess moisture”, or both, the receipt must be accompanied by a supplemental certificate in order for the commodity to be eligible for a marketing assistance loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows “infested” and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the “infested” designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When a supplemental certificate is issued under paragraphs (g)(1) and (h)(2)(i) of this section, the grade, grading factors and quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.
Commodity Credit Corporation, USDA  

§ 1421.108 Transfers and reconcentrations.

(a) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the FSA county service center.

(b) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the marketing assistance loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement or a calculation of average production of wool and mohair, such measurement or calculation to be made by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(c) Upon the filing of the Reconcentration Agreement and Trust Receipt by the producer and warehouse
§ 1421.109 Personal liability of the producer.

(a) When a producer obtains a commodity marketing assistance loan, the producer agrees, in writing, not to:

(1) Provide an incorrect certification of the quantity or make any fraudulent or erroneous representation for the marketing assistance loan; or

(2) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with §1421.10.

(3) The violation of the terms and conditions of the note and security agreement, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible. If CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages will be assessed on the quantity of the commodity that is involved in the violation.

(b) Such violations as referred to in paragraph (a)(3) of this section may include, but are not limited to:

(1) Incorrect certification;

(2) Unauthorized removal; and

(3) Unauthorized disposition.

(c) If the county committee determines that the producer has committed such violations, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(d) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(e) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as a result of unauthorized removal or disposition, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the marketing assistance loan which is equivalent to such quantity of the commodity. In the case of these violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section and the commodity involved in the violation must be redeemed at the lesser of:

(i) The rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement; or

(ii) The alternative repayment rate in effect on the date of the determination is issued by CCC that a violation has occurred, plus 15 percent of the original loan rate as provided on the note and security agreement.

(2) Did not act in good faith when the violation was committed, liquidated damages shall be assessed in accordance with paragraph (d) of this section, and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(f) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as result of an incorrect certification, CCC will determine the quantity of the commodity involved
Commodity Credit Corporation, USDA § 1421.109

with respect to such violation and require the repayment of that portion of the marketing assistance loan which is equivalent to such quantity of the commodity. In the case of an incorrect certification, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section, and the commodity involved in the violation must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(2) Did not act in good faith about the violation, liquidated damages shall be assessed in accordance with paragraph (d) of this section and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(g) If the producer fails to pay such amount within 30 days from the date of notification of violations as provided in paragraphs (e)(1) and (f)(1) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement.

(h) For violations subject to paragraphs (e)(2) and (f)(2) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement. If the loan has already been repaid, any market gain previously realized on the loan, plus interest, must be refunded to CCC. CCC will demand delivery of any remaining loan collateral if not repaid within the 30 calendar day notification period.

(i) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide sufficient evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken.

(j) If the loan is accelerated, the producer may not repay the loan at the alternative loan repayment rate and may not utilize commodity certificate exchanges, unless authorized by CCC.

(k) Producers denied or rejected for a farm-stored loan for any reason under this section may apply for a warehouse-stored loan.

(l) The loan plus other charges shall be payable to CCC upon demand if a producer:

(1) Makes any fraudulent representation in obtaining a marketing assistance loan, maintaining, or settling a loan; or

(2) Disposes or moves the loan collateral without the approval of CCC.

(m) A producer shall be personally liable for damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous or harmful to humans or animals or property.

(n) If the amount disbursed under a marketing assistance loan or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the marketing assistance loan is less than the amount required under this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(p) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note.

(q) Any or all of the liquidated damages assessed under this section may be waived if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

§ 1421.110 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan for the 2008 and 2009 crop years, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:
(1) The loan rate and charges, plus interest applicable to the loan;
(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.10.

(d) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:
(1) Completing a written request as CCC determines.
(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral.
(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(e) The authority to make commodity certificates available to the producer will terminate effective the ending of the 2009 crop year.

§ 1421.111 Loan settlement.

(a) The value of the settlement of marketing assistance loan shall be made by CCC on the following basis:

(1) For nonrecourse marketing assistance loans, the schedule of premiums and discounts for the commodity provided that:
(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or
(ii) If, the proceeds received from the sale of the commodity are greater than the sum of the amount due, plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to a secured creditor of the producer.

(2) For recourse marketing assistance loans, the proceeds from the sale of the commodity provided that:
(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or
(ii) If, the proceeds received from the sale of the commodity are greater than the amount due, plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to a secured creditor of the producer.

(3) If CCC sells the commodity described in paragraph (a)(1) and (a)(2) of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. If CCC sells any commodity obtained by delivery or forfeiture under a non-recourse marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the commodity and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the commodity to CCC.

(b) Settlements made by CCC for eligible commodities that are acquired by CCC and that are stored in an authorized warehouse will be made on the basis of the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(1) All eligible commodities that are stored in other than authorized warehouses must be delivered to CCC as CCC instructs. Settlement will be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an authorized warehouse, settlement will be made by CCC on the basis of the basic marketing assistance loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.
§ 1421.113 Recourse marketing assistance loans.

(a) CCC shall make recourse marketing assistance loans available to eligible producers of high moisture corn, high moisture grain sorghum and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

(b) Repayment must be paid in full at principal plus interest on or before the loan maturity date.

(c) Recourse marketing assistance loan collateral may not be delivered or forfeited to CCC in satisfaction of the loan indebtedness.

§ 1421.112 Foreclosure.

(a)(1) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the marketing assistance loan shall immediately vest in CCC.

(2) Upon maturity and nonpayment of a farm-stored marketing assistance loan, title to the unredeemed collateral shall automatically transfer to CCC upon CCC demand.
§ 1421.200 Applicability.

(a) During the loan availability period, loan deficiency payments will be made available to eligible producers when the alternative repayment rate is less than the applicable county loan rate.

(b) To be eligible to receive loan deficiency payments a producer must:
   (1) Comply with all marketing assistance loan eligibility including beneficial interest requirements.
   (2) Agree to forgo obtaining such loan, if applicable; and
   (3) File in person, by mail or electronically a request for payment on a form prescribed by CCC; and
   (4) Otherwise comply with all program requirements.

(c) (1) A producer must submit to the FSA Service Center a completed request for a loan deficiency payment on forms prescribed by CCC. This submission must be received on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Such completed and submitted forms indicate the producer’s intentions and further provide the terms and conditions of the loan deficiency payment program. If all or any of the provisions of this paragraph are not met by the producer, the producer may not obtain the loan deficiency payment benefit.

   (2) With respect to a request for a loan deficiency payment for unshorn pelts, a completed request for such a payment must be submitted on or before the earlier of the date of slaughter of the lamb or the loss of beneficial interest in the lamb or the unshorn pelt produced from the lamb. In addition, the lamb must have been owned for not less than 30 days prior to the date such application is filed with CCC and must have been slaughtered for personal use, or sold for slaughter and slaughtered within 10 calendar days after the sale.

   (d) For unshorn pelts, the lamb must be owned for a period of not less than 30 days in advance of the application and sold for immediate slaughter or slaughtered for personal use. Producers who do not sell lambs for immediate slaughter are ineligible for a loan deficiency payment.

§ 1421.201 Loan deficiency payment rate.

(a) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans under §1421.10.

(b) The loan deficiency payment rate will be the rate in effect in the county where the commodity was marketed or stored on the date:

   (1) The request for benefits is received in the FSA Service Center, if the producer retains beneficial interest in the quantity on that date.

   (2) Beneficial interest was lost, as determined by CCC and as provided in §§1421.6 and 1421.13, if on the date the request for benefits was received in the FSA Service Center the producer no longer has beneficial interest in the requested quantity.

   (3) The commodity is delivered, if the producer elects to receive the LDP rate based on the date of delivery.

   (c) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined under paragraph (b) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a non-recourse loan for which the loan deficiency payment is requested.

§ 1421.202 Loan deficiency payment quantity.

(a) A loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity under §1421.12.

(b) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in the same storage facility. Two or
Commodity Credit Corporation, USDA

more producers may obtain individual loan deficiency payments for their share of the commodity that is stored commingled in a farm storage facility with commodities for which a loan deficiency payment has been requested and shall be liable for any damage incurred by CCC for incorrect certification of such commodities under §1421.203.

(c) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in an authorized or unauthorized warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.


§ 1421.203 Personal liability of the producer.

(a) When a producer requests a loan deficiency payment, the producer agrees:

(1) When signing the Loan Deficiency Payment Agreement and Request, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation, that CCC will rely upon when determining eligibility for a loan deficiency payment; and

(2) That violation of the terms and conditions of the loan deficiency payment request, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible. If CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(b) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the loan deficiency payment.

(c) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed according to paragraph (b) of this section and the producer must repay the loan deficiency payment applicable to the loan deficiency quantity involved in the violation and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amount within 30 days from the date of notification the producer must repay the entire loan deficiency payment and any other charges plus interest.

(2) Did not act in good faith when the violation was committed, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer shall repay the entire loan deficiency payment and any other charges plus interest.

(d) CCC may waive the liquidated damages assessed according to paragraph (b) of this section if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

(e) If, for any violation to which paragraph (b) of this section applies, the county committee determines that CCC’s interest is not or will not be protected, the county committee shall:

(1) Call the producer’s farm-stored loans;

(2) Deny future farm-stored loans for the current and 2 following crop years;

(3) Deny loan deficiency payments for the current and 2 following crop years unless production evidence is presented to CCC. Depending on the severity of the violation, the county committee may deny future farm-stored loan and loan deficiency payments without production evidence.

(f) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide sufficient evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative action will be taken under this section.

(g) If the amount disbursed under loan deficiency payments exceeds the amount authorized by this part, the producer shall be liable for repayment.
§ 1421.300 Applicability.

(a) The regulations in this subpart are applicable to the 2008 through 2012 crops of eligible acreage planted to wheat, barley, oats or triticale that is grazed by livestock and not harvested in any other manner. This subpart sets forth the terms and conditions under which a grazing payment in lieu of a loan deficiency payment will be made by CCC.

(b) The form that is used in administering these payments is available in State and county FSA offices and shall be prescribed by CCC.


§ 1421.301 Administration.

(a) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA employees under the general direction and supervision of the State and county FSA committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

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

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

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs (DAFP), FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program. In addition, DAFP may establish other conditions for payments that will assist in achieving the goals of the program and may include such provisions in the program agreement or other program documents.

§ 1421.302 Eligible producer and eligible land.

(a) To be an eligible producer for a payment under this subpart, the person must be a producer of wheat, barley, oats, or triticale in the 2008 through 2012 crop years. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in parts 12, 718, 1400, and 1405 of this title. A person will not be considered the producer of the crop unless that person was responsible for the planting of the crop and had control and title of the crop at all times, including, at the time of planting and the time of the request for a payment under, this subpart.
(b) A minor may participate in the program if the right of majority has been conferred on the minor by court order or by statute, or if the minor participates through a guardian authorized to act on the minor’s behalf in these matters. Alternatively, a minor may participate if the program documents are all signed by an acceptable (to CCC) guarantor or if bond, acceptable to CCC, is provided by a surety.

(c) For the crop to be eligible, the crop, in addition to other standards that may apply, must be grown on land that is classified as “cropland” in FSA farm records or on land that FSA determines has been cropped in the last 3 years except that the land may also qualify if the land is committed to a crop rotation, normal for the locality, that includes harvesting the subject crop for grain. These rules are designed to assure, to the extent practicable, the available payment did not produce plantings that otherwise would not have occurred and the CCC may deny payments in any instance in which there is reason to believe that the planting was done for that purpose. To that end, if the commodity involved has not been previously grown by the producer or is not one which is not predominately produced locally, the producer must submit evidence of seed purchases for planting the commodities and other evidence deemed needed or appropriate by the COC in order to assure that the program goals are made and that the land was not planted to an eligible commodity simply to obtain a payment. Also, the land to be eligible must, for the year involved, be grazed and cannot, during the crop year, be harvested at any time for any purpose, except as determined by the Deputy Administrator to accommodate producers with a history of double-cropping when the crop to be harvested is not the crop for which a payment is to be made under this subpart. Land will be considered grazed only to the extent that the crop on the land is consumed in the field as live plants by livestock for the normal period of time for grazing in the area.

(d)(1) A producer must, at the time of the agreement made under this part to obtain a payment, meet all other eligible criteria for obtaining loan deficiency payments.

(2) For producers of triticale who obtain a payment under this subpart the producer must enter into an agreement with CCC to forgo any harvesting of triticale on the acreage for which such a payment is made.

(e)(1) No payment will be made if the crop could not have been harvested because of weather conditions or any other reason.

(2) The producer must retain the control and title of the commodity for which the payment is sought from the date of planting through the date on which mechanical harvesting of the crop would normally occur.

(f) Producers who elect to graze 2008 through 2012 crop wheat, barley, oats, or triticale will not be eligible for an indemnity under the Federal Crop Insurance Program provision of Chapter IV of this title or a payment under Noninsured Crop Assistance Program authorized under part 1437 of this chapter.


§1421.303 Time and method for application.

Application for the program provided in this subpart must be received, at the county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would normally be harvested and no later than the final loan availability date as determined in accordance with §1421.5. The application must describe the land to be grazed and, in accordance with standards set by CCC, the tract/field location. The COC will determine the first harvest date which shall take into account the date on which such crops are, locally, normally harvested for any purpose. Where multiple producers are involved, the form must reflect each producer’s share in the crop. No producer must receive payments under this subpart except to the extent that the payments are commensurate with that share. Should a person who is entitled to receive a payment under this subpart die, that payment, as earned, may be made to other
§ 1421.304 Payment amount.

(a) The grazing payment rate shall be the loan deficiency payment in effect for the farm on the date which the producer submits a complete program application to CCC. For triticale, the grazing rate will be equal to the loan deficiency payment rate in effect for the predominant class of wheat in the county where the farm is located as of the date the application is filed.

(b) The payable units of production shall be computed by multiplying the eligible grazed acres by the applicable yield determined under paragraph (c) of this section.

(c) The payment yield shall be the yield in effect for the calculation of direct payments under part 1412 of this chapter. In a case of a farm for which a farm program payment yield is unavailable for a covered commodity, an appropriate payment yield for the covered commodity on the farm will be determined by CCC taking into consideration the farm program payment yields applicable to the commodity using three (3) similar farms. For triticale, the payment yield shall be the yield for wheat from three (3) similar farms in that county.

(d) No payment may be received or retained under this subpart to the extent that the payment, were they considered to be LDP’s, would place that person over the per person per year payment limit that applies to LDP’s. The producer agrees that the CCC may collect any payment considered to be an overpayment by reason of this subpart by withholding LDP payments until the matter is resolved, by treating the LDP as being not payable to the extent that a grazing refund would otherwise be due, by setoff, or by any other means available to CCC.

(e) Payments can be withheld until the actual grazed acreage is verified and justified in connection with any other reports filed with FSA with respect to the farm (or filed with some other person or agency) and until all other necessary information is obtained. CCC may require such other verification as it deems appropriate to assure that the program goals are met.

(f) To receive the payment, the eligible producer must submit a request for payment on an application form as prescribed by CCC or FSA. The application may be obtained from the county FSA office, or from the USDA or FSA web site in the Internet. The form must be submitted to the county by the close of business on or before March 31 of the calendar year following the year the crop is normally harvested.

(g) The producer will be ineligible for payments under this subpart if any discrepancies between the reported acreage on the program form and other reports of acreage by the producer are not resolved by a date set by CCC.

§ 1421.305 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this subpart if it is determined by DAFP, the State committee, or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this subpart to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of
the producer's actions, shall be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and any person receiving payment under this subpart, as a result of such acts, shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.


$1421.306 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this application, of this subpart, and if any refund of a payment to CCC shall become due for that or other reason in connection with the application, of this subpart, all payments made under this subpart to any producer shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1402 of this chapter.

(b) All persons listed on an application shall be jointly and severally liable for any refund due in connection with that application and for any related charges which may be determined to be due for any reason.

(c) Interest shall be applicable to refunds required from the producer. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment but the interest rate shall increase to reflect any increase in the rate charged to CCC by Treasury for any percent of time for which the interest assessment is collected. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Late payment interest shall be assessed on refunds in accordance with the provisions of, and subject to the rates in part 1403 of this chapter.

(e) Producers must refund to CCC any excess payments made by CCC with respect to any application in which they have an interest. Such refund shall be subject to interest at the same rate that applies to other refunds.


§1421.400 Applicability and abbreviations.

(a) This subpart sets forth the terms and conditions under which an entity which is a marketing association of peanut producers, or a subsidiary of such an entity, may qualify to become an eligible "designated marketing association" or "DMA" qualified to process peanut marketing assistance loans and peanut loan deficiency payments for peanut producers. This subpart only applies with respect to peanut loans and peanut loan deficiency payments.

(b) [Reserved]

(70 FR 33799, June 10, 2005, as amended at 74 FR 15656, Apr. 7, 2009)

§1421.401 DMA responsibilities.

(a) DMAs are eligible to process the marketing loans and loan deficiency payments provided for in this part only for peanut producers and only if the DMA and the producers and peanuts meet all eligibility criteria set out in this part, including, but not limited to, the DMA eligibility provisions of this subpart. In carrying out those functions, DMAs must:

(1) Prepare and execute the appropriate CCC peanut MAL and LDP application documents;

(2) Determine whether producers and the commodity are eligible for MALs and LDPs, including whether the otherwise eligible peanuts are free and
§ 1421.402 DMA eligibility to process loans and loan deficiency payments.

(a) A DMA is eligible to process any marketing assistance loan or loan deficiency payments only if approved in advance to handle such matters by the Farm Service Agency pursuant to this part; and:

(1) The DMA meets the financial requirements and other requirements in this subpart and part;

(2) The DMA is comprised solely of peanut producers or is a subsidiary of an organization of peanut producers;

(3) The DMA is not controlled directly or indirectly by a person or entity that acquires peanuts for processing or crushing through a business involved in buying and selling peanuts or peanut products;

(4) The DMA does not take title at any time to any peanuts for which it processes loans or loan deficiency payments, irrespective of whether such title is taken before or after those activities are performed. If such title or interest is taken, the DMA shall be responsible to return to CCC the full amount of the CCC proceeds disbursed with respect to the peanuts; and

(5) The DMA meets any additional requirements imposed by CCC or FSA.

(b) As part of performing the responsibilities in paragraph (a) of this section, DMAs shall:

(1) Become knowledgeable of and follow the procedures in CCC and FSA peanut program regulations, applicable notices published in the Federal Register, applicable FSA peanut program handbooks and amendments thereto, and any applicable notices or instructions issued by FSA and the Agricultural Marketing Service.

(2) Make and service CCC peanut MALs and LDPs, only upon the presenting by producers or their agents of the warehouse receipts, unless otherwise directed by CCC.

(3) Attend, at the DMAs expense, DMA peanut MAL, and LDP program training offered by CCC.

(4) Provide sufficient personnel, computer hardware, computer communications systems, and software, as determined necessary by CCC, to administer the peanut MAL and LDP program.


§ 1421.403 DMA approval.

(a) Entities wishing to apply to be a DMA enabled to perform loan and loan deficiency functions under this part for peanuts must submit an application for such approval to FSA in a form approved by CCC. That application shall include the following:

(1) Two originals of a properly executed Designated Marketing Association agreement containing the terms and conditions prescribed by CCC.

(2) A financial statement of not less than 1 year old on the date submitted, including accompanying notes, schedules, or exhibits, certified by a certified public accountant as fairly representing the entity’s financial condition.

(3) The entity’s tax identification number.

(70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009)
§ 1421.404 Financial security.

In order to be approved to handle loans and loan deficiency payments, the DMA must:

(a) Have a current net worth ratio of at least 1:1.

(b) Provide security equal to $100,000 or a greater amount as determined by CCC.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.405 Liability.

(a) DMAs shall indemnify CCC against any claim or loss by CCC in connection with the processing of any MALs or LDPs or other activity carried out by the DMA. If CCC pays any claim or suffers a loss as a result of the actions of DMA, or if a refund otherwise becomes due to CCC, payment in the amount of such losses or refund, plus interest, may be set-off by CCC from the financial security provided by DMA as required by this subpart. If the amount of the loss exceeds the amount of the financial security, such amount shall be paid to CCC by DMA with interest. Interest and other charges may be assessed consistent with § 1403.9 of this chapter. Remedies provided in this section or part are in addition to other remedies or penalties, whether civil, criminal or otherwise, as may apply.

(b) If a DMA becomes liable to CCC under paragraph (a) of this section or otherwise in connection with this subpart, such DMA shall not be eligible to process a LDP or MAL until the claim amount owed CCC is paid in full, and the full amount of financial security required by this subpart has been restored.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.406 Reporting requirements.

(a) A DMA shall furnish information to CCC within thirty calendar days relating to any substantial change in the DMA operations including but not limited to the following:

(1) A change in its articles of incorporation;

(2) A resolution affecting loan or LDP operations.

(3) A change to the DMA’s name, address, phone number, or related information on the agreement.

(b) Other Information. The DMA shall supply such additional information as CCC may request related to the DMA’s continued approval by CCC to process loans and LDPs under the authority provided in this subpart.

(c) CCC request for information. CCC may require a DMA to submit updated information, a new application, or a request for recertification whenever CCC becomes aware of any changes or has any reason to be uncertain that the DMA is operating in a manner that is consistent with the information already submitted, or consistent with this part.

(d) Annual recertification. Within 4 months after the end of the DMA’s fiscal year, a DMA must submit the following information to CCC:

(1) A current financial statement prepared according to generally accepted accounting principles;

(2) A report of audit or review of the financial statement conducted by an independent Certified Public Accountant. The accountant’s report of audit or review shall include the accountant’s certifications, assurances, opinions, comments, and notes with respect to such financial statements.
§ 1421.407 Suspension and termination.

(a) Suspension. If CCC determines that a DMA is not in compliance with the DMA agreement CCC may suspend the DMA from making peanut MALs and LDPs until the DMA corrects the violation, or longer.

(b) Termination. The DMA agreement may be terminated by the DMA upon 30-calendar day’s written notice to CCC. CCC may cancel the agreement at any time. Upon termination DMA shall immediately cease processing MAL or LDP requests and documents except as needed to preserve CCC’s position with respect to existing loans or LDPs.

§ 1421.408 Prohibited activity.

(a) DMAs approved to handle loans under this subpart may not:

(1) Discriminate against or deny any producer from receiving MALs or LDPs because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status for which they would otherwise be eligible under the statutes regulating the MAL and LDP program.

(2) Pool peanuts for the purpose of obtaining peanut MALs or LDPs from CCC.

(3) Pool the proceeds obtained from peanut MALs or LDPs made by CCC.

(4) Process farm-stored certified or measured MALs or LDPs unless authorized by CCC.

(5) Take title to any peanuts.

(6) Operate the DMA under the same entity and tax identification number of a CCC-approved CMA.

(7) Refuse services to producers because the DMA was not granted a power of attorney for purposes of executing MAL documents to obtain MALs for the producer, repaying the MAL for the producer, obtaining LDPs for the producer, or marketing the producer’s peanuts.

(8) Adopt any scheme or device to circumvent the purpose of the peanuts MAL and LDP program regulations, the regulation governing DMAs, or the DMAs agreement with CCC.

(9) Process MALs or LDPs for producers involved in a bankruptcy proceeding unless authorized by CCC.

(10) Process MALs or LDPs on ineligible peanuts.

(b) If the prohibitions of this section are violated FSA or CCC may take one or more of the actions authorized in this part or otherwise authorized.

§ 1421.409 Monitoring payment limitations.

DMAs shall monitor potential gains for producers and not disburse proceeds or permit loan repayments in lieu of forfeitures of the peanuts that would produce a gain over the per person per year limit allowed to the producer by this part and part 1400 of this chapter or which would otherwise be prohibited. Payment limitations are not applicable for the 2009 through 2012 crop years.

§ 1421.410 Recordkeeping requirements.

A DMA shall maintain producer MAL and LDP paper documents and electronic records for an indefinite period unless otherwise notified by CCC.

§ 1421.411 Forms.

For purposes of conducting business related to this part, a DMA shall use either current CCC forms or other forms approved by CCC. A DMA may perform functions under this part only
§ 1421.412 Powers of attorney.

DMAs may hold a power of attorney from a producer allowing the DMA to sign MAL and LDP documents for the producer, but DMAs may obtain and hold such powers only in accordance with the requirements of CCC governing such powers.

§ 1421.413 Liens and waivers.

DMAs performing loan-related functions pursuant to the authority in this subpart shall determine, to the same extent as required for loans handled by FSA county offices, whether a lien on the peanuts exists by performing or obtaining a lien search for all peanuts to be pledged for each MAL, except that the cost associated with such lien search and any necessary lien waivers shall be borne by the DMA. If a lien exists, the DMA shall obtain, on an approved CCC form, a signed waiver from each lienholder with an interest in any such lien.

§ 1421.414 Producer request to a DMA for an MAL or LDP.

Peanut producers or their authorized agent may request that an MAL or LDP be processed by a DMA only if the DMA is approved under this subpart to process such a request and only if the producer supplies to the DMA:

(a) Beneficial interest information. Beneficial interest must be maintained by the producer according to §1421.6 for the peanuts to be eligible for MAL or LDP; accordingly, the producer must supply to the DMA such information as it needed to make that determination.

(b) Warehouse receipts and lien information. Producers must supply for all peanuts either individual paper warehouse receipts in the producer’s name or an electronic warehouse receipt (EWR) number and provider’s name. Producers must supply relevant lien information regarding the peanuts; however, the producer’s obligation in this regard does not relieve the DMA from making the appropriate lien search.

§ 1421.415 Processing marketing assistance loans.

DMAs shall take the following actions in the following order when an application for an MAL is filed:

(a) Make all the determinations that are a precondition for a loan, including lien determinations and if requested by the producer, enter into a power of attorney agreement with the producer.

(b) If there is an EWR for the peanuts, instruct the current holder to notify the electronic warehouse receipt provider to amend the electronic warehouse receipt to show the DMA as holder. If a paper receipt is involved, the DMA must obtain the receipt (and later, at the appropriate time include the receipt in the documents delivered to the CCC).

(c) Complete all MAL forms.

(d) After the producer or the person holding the power of attorney for the producer signs MAL document, provide the signatory with copies of the documents.

(e) Where there is an EWR for the peanuts notify the EWR provider to make CCC the holder of the EWR and secure an affirmation verifying that CCC has been made the holder of the EWR.

§ 1421.416 Processing loan deficiency payments.

(a) DMAs shall take the following actions in the following order when an application for an LDP is filed:

(1) In addition to other determinations as must be made, the DMA shall determined whether the producer has sufficient remaining eligibility under the applicable payment limit to allow the receipt of the LDP. If there is not sufficient eligibility, the DMA must refuse to process the request;

(2) If EWRs are applicable for the peanuts for which the LDP is sought, the DMA must instruct the current holder to notify the EWR provider to
§ 1421.417 Disbursing MAL and LDP proceeds.

(a) A DMA may request that CCC establish a drawdown account from which to disburse MAL and LDP amounts to producers, and designate the financial institution they wish to use.

(b) CCC will determine whether a drawdown account is justified and the amount of the account.

(c) If there is no drawdown account, MAL and LDP proceeds shall be distributed to the producer within 3 work days from the date the DMA receives MAL or LDP proceeds from CCC, after deduction of authorized charges or fees for services. If there is a drawdown account, the MAL and LDP proceeds shall be distributed to the producer within 3 days of the completion of the application.

(d) The DMA shall assess charges and fees at the same rate for each producer that it serves.

(e) If a drawdown account is used, CCC shall replenish the amount as necessary as it is drawn down.

(f) The DMA must notify CCC of the actual date on which the MAL is disbursed.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.418 Submitting MAL and LDP documentation to FSA.

(a) Until such time as an alternative FSA loan or LDP making system is made available to DMAs, within 3 business days of any DMA prepared disbursement, the DMA shall group separately and submit to FSA:

(1) MALs with the same disbursement date, peanut type, warehouse code, and State where peanuts were inspected; and LDPs with the same LDP rate, approval date, and peanut type.

(b) Each of the groups identified in paragraph (a) of this section shall be submitted to FSA with the following documents:

(1) Individual paper warehouse receipts or EWR numbers, and the EWR provider’s name representing the bundled MALs or LDPs.

(2) A form to itemize receipts, and other data, as required, or a pre-processed electronic file containing data required by FSA.

(c) FSA may process each DMA prepared MAL or LDP group for the volume of peanuts on multiple receipts as one MAL or LDP, waive the service fee to the DMA, and either hold MAL paper warehouse receipts, or verify that CCC is holder of the EWRs as of the date of disbursement.

(d) In the case of an MAL, if CCC was not the holder of the EWR on or before the date the DMA prepared MAL was disbursed, the applicable receipts shall be rejected, and funds shall not be distributed to the DMA drawdown account until CCC becomes the holder of the EWR.

(e) If MAL and LDP documentation is acceptable, FSA will disburse MAL or LDP funds to the DMA, with appropriate supporting documentation.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.419 MAL or LDP servicing.

(a) The DMA shall be responsible for servicing MALs and are required to take the following actions:

(1) Send the producer a maturity notice letter before MAL maturity.

(2) Maintain the MAL or LDP documents according to FSA requirements.

(3) Transmit the necessary funds to repay the MAL to FSA.

(b) FSA shall process the CCC release of paper receipts or EWRs where such a release is appropriate.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]
§ 1421.420 Inspection and reviews.

The books, documents, papers, and records of the DMA and parent company shall be maintained for six years after the applicable crop year and shall be made available to CCC for inspection and examination at all reasonable times. At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the DMA is operating or has operated in accordance with the regulations in this part, any articles of incorporation, articles of association, partnership documents, agreements with producers, the representations made by the DMA in its application for approval, and, where applicable, its agreements with CCC. If the DMA is determined to be not complying with this part or any of its agreements, CCC will take appropriate action as provided in elsewhere in this subpart or other action CCC determines appropriate.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.421 Appeals.

Parts 11 and 780 of this title apply to this subpart.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

Sec.
1423.1 Applicability.
1423.2 Administration.
1423.3 Definitions.
1423.4 General requirements.
1423.5 Application requirements.
1423.6 Financial information documentation requirements.
1423.7 Net worth alternatives.
1423.8 Approval or rejection.
1423.9 Examination of warehouses.
1423.10 Exceptions for United States Warehouse Act licensed warehouses.
1423.11 Delivery and shipping standards for cotton warehouses.
1423.12 Application, inspection, and annual agreement fees.
1423.13 Appeals, suspensions, and debarment.


SOURCE: 71 FR 35773, June 22, 2006, unless otherwise noted.

§ 1423.1 Applicability.

(a) This part sets forth the terms and conditions for approval of a warehouse operator by the Commodity Credit Corporation (CCC) to store and handle CCC interest commodities, which are owned by CCC and, as may be required under parts 1421, 1427 and 1435 of this title, with respect to commodities pledged as security for a loan made by CCC. CCC may require that a warehouse enter into a storage agreement under this part to store such commodities. The execution of such a storage agreement by CCC does not constitute a commitment that CCC will use the warehouse.

(b) By entering into a storage agreement with CCC, the warehouse operator agrees to comply with the terms and conditions of the storage agreement.

§ 1423.2 Administration.

On behalf of CCC, the Farm Service Agency (FSA) will administer this part under the supervision of the Deputy Administrator for Commodity Operations (Deputy Administrator), FSA.

§ 1423.3 Definitions.

Active shipping order means an early shipping order or shipping order, as defined in this section, scheduled for a current cotton warehouse reporting week or for a prior reporting week, but not picked up.

Agreement means agreements covering storage and handling of any such commodity CCC may determine appropriate for storage.

Early shipping order means a list of bale tag numbers sent to a cotton warehouse operator without transfer of warehouse receipts.

KCCO means the FSA, Kansas City Commodity Office.

Shipping order means a list of bale tag numbers sent to a cotton warehouse operator accompanied by transfer of warehouse receipts.

Warehouse means a building, structure, or other protected enclosure, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.
§ 1423.4 General requirements.
(a) Unless otherwise provided in this part, approved warehouse operators must maintain a current and valid license for the kind of storage operation for which the warehouse operator seeks approval if such a license is required by State or local laws or regulations and maintain accurate and complete inventory and operating records.
(b) Approved warehouse operators may only use pre-numbered warehouse receipts, or pre-assigned ranges of numbers for electronic warehouse receipts as set forth in the agreement, and may only use pre-numbered scale tickets, if applicable, as CCC may approve.
(c) In addition, the warehouse operator must:
   (1) Be in compliance with state and local laws regarding fire safety;
   (2) Furnish a copy of any written lease agreement to CCC with the application. All leases are subject to CCC approval; and
   (3) Have sufficient employees and management with technical qualifications and skills in the warehousing business regarding the commodities subject to the agreement.
(d) Unless otherwise provided in this part, each approved warehouse shall:
   (1) Be maintained under the control of the warehouse operator;
   (2) Be maintained in a good state of repair; and
   (3) Maintain adequate equipment to receive, handle, store, preserve and deliver the applicable commodity.

§ 1423.6 Financial information documentation requirements.
To be approved under this part, a warehouse operator shall submit a current financial statement at the time of application, and annually thereafter, as provided for in the applicable storage agreement.

§ 1423.7 Net worth alternatives.
Warehouse operators with net worth equal to or greater than the minimum net worth required, but less than the total net worth for the commodity involved in the particular agreement, may satisfy the net worth deficiency by furnishing one of the following:
(a) A bond which:
   (1) Is executed by a surety approved by the U.S. Department of the Treasury so long as the surety maintains someone authorized to accept service of legal process in the State where the warehouse is located.
   (2) Is executed on either a bond form obtained from CCC, or which is furnished under State law or operational rules for non-governmental supervisory agencies, if approved by CCC, so long as CCC determines that such alternative bond:
      (i) Provides adequate protection to CCC;
      (ii) Has been executed by a surety approved by the U.S. Department of the Treasury or has an acceptable blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond; and
      (iii) Is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. Excess coverage on a bond for one warehouse will not be
Commodity Credit Corporation, USDA

§ 1423.11 Delivery and shipping standards for cotton warehouses.

(a) Unless prevented from doing so by severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, acts of civil or military authority, non-availability of transportation facilities or any cause beyond the control of the warehouse operator that renders performance impossible, the warehouse operator will:

(1) Deliver stored cotton without unnecessary delay.

(2) Be considered to have delivered cotton without unnecessary delay if, for the week in question, the warehouse operator has made available for shipment at least 4.5 percent of their applicable storage capacity in effect during the relevant week of shipment.

(b) The warehouse operator shall provide a written report to CCC on a weekly basis. The reporting week shall be the seven day period starting at midnight following the close of business on each Saturday and ending at midnight after close of business of the following Saturday. Before close of business of the first business day of the following week, the warehouse operator will provide following information to CCC:

Accepted by CCC against insufficient bond coverage on other warehouses;

(b) Cash and negotiable securities. Any such cash or negotiable securities accepted by CCC will be returned to the warehouse operator when the period for which coverage was required has ended and CCC determines there is no liability under the storage agreement;

(c) An irrevocable letter of credit meeting CCC requirements that is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. The issuing bank must be a commercial bank insured by the Federal Deposit Insurance Corporation or a financial institution subject to the Farm Credit Act, or

(d) Other alternative instruments and forms of financial assurance as the Deputy Administrator determines appropriate to secure the warehouse operator’s compliance with this section.

§ 1423.8 Approval or rejection.

(a) CCC will notify warehouse operators approved under this part in writing. Such approval does not relieve the warehouse operator of any obligation under any agreement to CCC or any other agency of the United States, and does not obligate CCC to use the warehouse.

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the cause(s) for rejection. CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director’s determination, obtain a review of the determination and an informal hearing by submitting a request with the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title.

[71 FR 35773, June 22, 2006, as amended at 71 FR 42017, July 25, 2006]

§ 1423.9 Examination of warehouses.

Before approval, and while a storage agreement is in effect, a warehouse must be examined by a person designated by CCC periodically to determine compliance with this part. CCC or any other agency of USDA shall, at any time, have the right to inspect the warehouse storage facilities and any applicable records. Inspection or examination by CCC does not absolve the warehouse operator of any failure to comply with this part that CCC does not discover. Failure to allow access to facilities as required under this paragraph will result in rejection or revocation of approval.

§ 1423.10 Exceptions for United States Warehouse Act licensed warehouses.

The financial requirements, net worth alternatives and examination provisions of this part do not apply if the warehouse operator is licensed under the U.S. Warehouse Act (USWA) for such commodities, but an examination under this part will be made of such a warehouse whenever CCC determines such action is necessary to protect its interests.
§ 1423.12 Application, inspection, and annual agreement fees.

Each warehouse operator not licensed under USWA shall pay to CCC a fee or fees, including an application fee, inspection fee, and an annual agreement fee for each warehouse approved by CCC or for which approval is sought. The terms and conditions of such fees will be set forth in the applicable agreement.

§ 1423.13 Appeals, suspensions, and debarment.

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title, and under such regulations the warehouse operator shall be considered as a "participant."

(b) Suspension and debarment actions taken under this part shall be conducted in accordance with part 1407 of this chapter. After expiration of the suspension or debarment period, a warehouse operator may, at any time, apply for approval under this part.

PART 1424—BIOENERGY PROGRAM

Sec.
1424.1 Applicability.
1424.2 Administration.
1424.3 Definitions.
1424.4 General eligibility rules.
1424.5 Agreement process.
1424.6 Payment application process.
1424.7 Gross payable units.
1424.8 Payment amounts.
1424.9 Reports required.
1424.10 Succession and control of facilities and production.
1424.11 Maintenance and inspection of records.
1424.12 Appeals.
1424.13 Misrepresentation and scheme or device.
1424.14 Offsets, assignments, interest and waivers.


SOURCE: 68 FR 24600, May 7, 2003, unless otherwise noted.

§ 1424.1 Applicability.

This part sets out regulations for the Bioenergy Program (program). It sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions a bioenergy producer must meet to obtain payments under this program and part from the Commodity Credit Corporation (CCC) for eligible bioenergy production. Additional terms and conditions may be set forth in the document required to request program benefits and in the program contract or agreement prescribed by CCC. This program is effective October 1, 2002, through September 30, 2006.
§ 1424.2 Administration.

This part shall be administered by the Executive Vice President, CCC, under the general direction and supervision of the Executive Vice President or designee. The Executive Vice President or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program, and may set such additional requirements as will facilitate the operation of the program. The funds available for the program shall be limited as set by this rule, otherwise announced by the Executive Vice President, CCC, or limited by law.

§ 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the Bioenergy Program Agreement or other form prescribed by CCC that must be executed for participation in the program.

Application means the application form prescribed by CCC or another form that contains the same terms, conditions, and information required.

ATF means the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Base production means a biodiesel producer’s current FY’s biodiesel production from eligible commodities that is not an increase over biodiesel production in the previous FY to date.

Biodiesel means a mono alkyl ester manufactured in the United States and eligible commodities that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Biodiesel producer means a producer that produces and sells biodiesel who is also registered and in compliance with section 211 (b) of the Environmental Protection Agency Clean Air Act Amendment of 1990.

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Conversion factor means:

1. For ethanol production, a factor that converts the number of ethanol gallons back to commodity units as determined in the manner announced by CCC;

2. For biodiesel production, the factor that will treat 1.4 gallons of biodiesel produced as having involved the consumption of one bushel of soybeans in any case when the feedstock was an eligible commodity that has a corresponding oil or grease market price; if there is none, then the factor shall be as determined and announced by CCC.

Eligible commodity means barley; corn; grain sorghum; oats; rice; wheat; soybeans; cotton seed; sunflower seed; canola; crambe; rapeseed; safflower; sesame seed; flaxseed; mustard seed; cellulosic crops, such as switchgrass and hybrid poplars; fats, oils, and greases (including recycled fats, oils and greases) derived from an agricultural product; and any animal byproduct (in addition to oils, fats and greases) that may be used to produce bioenergy, as CCC determines, that is produced in the United States and its territories.

Eligible producer means a bioenergy producer who meets all requirements for program payments.

Ethanol means anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

1. For fuel use, rendered unfit for beverage use, produced at a facility and in a manner approved by ATF for the production of ethanol for fuel;

2. As denatured ethanol used by blenders and refiners and rendered unfit for beverage use.

Ethanol producer means a person authorized by ATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means the fiscal year beginning each October 1 and ending September 30 of the following calendar year.

KCCO means the FSA, Kansas City Commodity Office.

Posted County Price means the same Posted County Price for different locations as is used under other CCC commodity programs for marketing loan gains and other matters.
§ 1424.4 General eligibility rules.

(a) An applicant must be determined eligible by KCCO and be assigned an agreement number.

(b) To be eligible for program payments, a producer must maintain records indicating for all relevant FY’s and FY quarters:

(1) The use of eligible commodities in bioenergy production;

(2) The quantity of bioenergy produced from an eligible commodity by location;

(3) The quantity of eligible commodity used by location to produce the bioenergy referred to in paragraph (b)(2) of this section; and

(4) All other records, needed, or required by the agreement to establish program eligibility and compliance.

(c) A producer must allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a producer being determined not eligible.

(d) For producers not purchasing raw commodity inputs, the production must equal or exceed that amount of production that would be calculated using the raw commodity inputs and the conversion factor set out in §1424.3. A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC’s satisfaction both soy oil purchases and biodiesel production for the applicable quarter. Any special conversion factors needed will be the province of CCC and CCC alone and CCC’s decision will be final.

(e) A producer must meet all other conditions set out in these regulations, in the agreement, or in other program documents.

§ 1424.5 Agreement process.

(a) To participate, an eligible producer must submit a signed agreement during the FY sign-up period. Agreements may be for single or multiple FY’s. However, multiple FY agreements require producers to submit annual production estimate reports during each applicable FY sign-up period. Such reports must comply with the terms of the agreement and this part. In all cases, the accounting for compliance will be made on a per FY basis.

(b) Sign-up each FY will be held for 30 calendar days beginning for:

(1) FY 2003 on the date of publication of this rule;

(2) FY 2004 and beyond on August 1 of the FY before the applicable FY.

(c) After agreements are submitted:

(1) If determined eligible by KCCO, an agreement number will be assigned, and a notification will be mailed to the producer;

(2) If additional information is needed for KCCO to determine eligibility, the producer will be contacted as soon as practicable and requested to provide additional supporting documentation;

(3) If determined ineligible by KCCO, producers will be notified in writing that their agreement was rejected and the reason for the determination.

§ 1424.6 Payment application process.

(a) To apply for payments under this program during an FY, an eligible producer must:

(1) Submit an application or eligibility report for each quarter. Submit the last quarterly application or report of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(2) Certify with respect to the accuracy and truthfulness of the information provided;

(3) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by CCC of both the producer’s net purchases of eligible commodities.
Commodity Credit Corporation, USDA § 1424.7

and net production of bioenergy compared to such production at all locations during the relevant periods. CCC may adjust the formulaic payments otherwise payable to the producer if there is a difference between the amount actually used and certified and the amount of increased commodity use calculated under the formula.

(b) After applications or reports are submitted, eligible producers:

(1) Shall submit such additional supporting documentation as requested by KCCO when additional information is needed to determine eligibility;

(2) Will be notified in writing of their ineligibility and reason for the determination, when the application is determined ineligible by KCCO; and

(3) Shall promptly refund payments when a refund to CCC is due. If a refund is not made promptly, CCC may establish a claim.

§ 1424.7 Gross payable units.

(a) For ethanol, producers will be eligible for payments on gross payable units for only their ethanol production from eligible inputs that exceeds, for the program year to date, their total comparable production at all locations as compared to the comparable portion of the previous year. Producers of ethanol are not eligible for base production payments. Producers shall not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund. For example, if at the end of the first quarter, a producer were to be paid for an increase of 500 gallons of ethanol production, but by the end of the second quarter that producer's production, for the year to date, was only 450 gallons, then a refund of the ethanol premium would be due for the loss of the corresponding 50 gallons of net production increase. Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, the extra ethanol production from eligible inputs will be converted to gross payable units by dividing the gallons of increased ethanol by the applicable conversion factor.

(b) Biodiesel producers will be eligible for payments on gross payable units for all biodiesel production from eligible inputs. For eligibility purposes there will be two kinds of payment: additional production payments (APP), and base production payments (BPP). Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, gross payable units for biodiesel production from eligible inputs will be calculated as follows:

(1) For APP, by dividing the gallons of increased biodiesel by the biodiesel conversion factor of 1.4. APP payments will be made on increases as compared with the previous FY. Producers will not be paid twice for the same production. Failure to maintain year to date biodiesel production increases between quarters will require a comparable APP refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for 500 gallons of increased biodiesel production, but by the end of the second quarter that producer's production, for the year to date, was only 450 gallons, then a refund of the APP premium would be due for the loss of the corresponding 50 gallons of net production increase.

(2) For BPP, which will be made on production not eligible for the APP, by dividing the base production by the biodiesel conversion factor of 1.4 and multiplying the result by 0.5 in FY 2003, 0.3 in FY 2004, 0.15 in FY 2005, or 0.0 (zero) in FY 2006 to determine base biodiesel production gross payable units.

(3) Adding the APP and BPP to determine biodiesel gross payable units.

(c) There shall only be one eligible producer per plant location.

(1) When producers move production from one plant to another between FY's, the prior FY's production for the producer for program payment calculations tied to increases in production shall be the greater of:

(i) The production at the plant operated by the producer in the prior FY, or

(ii) The production in the prior FY at the plant being taken over by the producer in the current FY.

(2) New producers who are taking over a plant with prior bioenergy production shall assume that production history for program purposes. For example: in FY 2002, Producer A produced 1,000 gallons of bioenergy in plant 1 and
Producer B produced 500,000 of bioenergy in plant 2. In FY 2003, Producer A assumes operation of plant 2; Producer B moves to plant 3, which was not in the program in FY 2002, but with FY 2002 production of 400,000 gallons from eligible commodities; and Producer C assumes operations of plant 1. In FY 2003, for program purposes solely based on these respective plants, Producer A would have a prior FY production of 500,000 gallons; Producer B would have a prior FY production of 500,000 gallons; and Producer C would have a prior FY production of 1,000 gallons. These examples would apply when a producer moves its entire operation from one plant to another. Otherwise, for purposes of computing whether a producer has increased production in the current year from the previous year, the determination will be made by comparing for the current year the producer's production figures from all locations in which the producer has an interest with, for the previous year, the sum of:

(i) Production at those locations by any person including, but not limited to, the producer, and

(ii) Additional production by the producer at any other location in that year.

(3) Also, as needed to avoid frustrating the goals of the program, the Executive Vice President of CCC may treat producers with common interests, common ownership, or common facilities or arrangements as the same producer.

§ 1424.8 Payment amounts.

(a) An eligible producer may be paid the amount specified in this section, subject to the availability of funds. Total available funds shall be as determined appropriate by CCC and shall not exceed $150 million in any of FY’s 2003 through 2006.

(b) For agreements submitted during an FY sign-up, applicants must project increases in production. Based on expected commodity prices, using the formula set out in this section, submissions will be assigned an expected payment value. When the payment value of all timely submitted and validly executed agreements exceed available funding, CCC may, at its discretion, prorate payments to be made under such agreements based on total available funding.

(c) When the payment value of all timely submitted applications exceed available funding, CCC will prorate payments based on total available funding.

(d) Subject to this section and conditions in the agreement, a producer’s payment eligibility shall be adjusted at the end of each quarter, and calculated as follows:

(1) Gross payable units, calculated and determined in accordance with §1424.7, shall be converted to net payable units for producers whose annual bioenergy production is:

(i) Less than 65 million gallons, by dividing by 2.5;

(ii) Equal to or more than 65 million gallons, by dividing by 3.5;

(2) Net payable units calculated under paragraph (d)(1) of this section shall then be converted to a gross payment by multiplying net payable units by the per-unit value of the commodity as of the 10th business day before the start of the production quarter, determined as follows:

(i) For ethanol:

(A) For those agricultural commodities with an established Posted County Price, CCC will use the Posted County Price that CCC announces daily for the county in which the plant is located and applicable quality factors as CCC may establish.

(B) For agricultural commodities that CCC determines do not have Posted County Prices, CCC will use market data CCC determines to be appropriate for the applicable commodity.

(ii) For biodiesel made from:

(A) Soybeans or soy oil, CCC will use the Posted County Price for soybeans for the county where the plant is located.

(B) Eligible commodities other than soybeans or soy oil that have a corresponding oil or grease market price, CCC will use the applicable feedstock’s oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service’s weekly “Soybean
§ 1424.12 Appeals.

(a) A participant subject to an adverse determination under this part may appeal by submitting a written request to: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250–0550. The appeal must be delivered in writing to the Deputy Administrator or postmarked within 30 days after the date the Agency decision is mailed or otherwise provided to the participant. The Deputy Administrator may consider a late appeal if determined warranted by the circumstances.

(b) The regulations at 7 CFR part 11 apply to decisions made under this part.

(c) Producers who believe they have been adversely affected by a determination by the Agency must seek review with the Deputy Administrator.
§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:
   (1) Adopted any scheme or device that tends to defeat the purpose of the program in this part;
   (2) Made any fraudulent representation; or
   (3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer’s actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(d) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions and rates prescribed in part 1403 of this chapter.

§ 1424.14 Offsets, assignments, interest and waivers.

(a) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the bioenergy, 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 in part 1403 of this chapter shall be applicable to agreement payments.

(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 chapter.

(c) Interest charged by CCC under this part shall be at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and/or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec. 1425.1 Applicability.
1425.2 Administration.
1425.3 Definitions.
1425.4 Approval.
1425.5 Confidentiality.
1425.6 Approved CMA’s.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Open membership.
1425.10 Financial ratio requirement.
1425.11–1425.12 [Reserved]
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Payment limitation.
1425.17 Eligible commodity and pooling.
1425.18 Distribution of proceeds.
1425.19 Member cooperatives.
1425.20 [Reserved]
1425.21 Records required.
1425.22 Inspection and investigation.
1425.23 Reports.
1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.25 Appeals.


SOURCE: 63 FR 17312, Apr. 9, 1998, unless otherwise noted.

§ 1425.1 Applicability.

This part sets forth the terms and conditions an approved Cooperative Marketing Association (CMA) must meet to obtain commodity marketing assistance loans (loans) and loan deficiency payments (LDP’s) from CCC on behalf of its members. A CMA meeting these terms and conditions may obtain loans and LDP’s for any eligible commodity for which a loan and LDP program is in effect.
§ 1425.2 Administration.
On behalf of CCC, the Farm Service Agency will administer the provisions of this part under the general direction and supervision of the Deputy Administrator for Farm Programs. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.
The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions in this section.

Active member is a member who has utilized the services offered by a CMA in one of the three preceding CMA fiscal years or such shorter period as may be provided in the CMA’s articles of incorporation or bylaws.

Approved cooperative marketing association (CMA) is a cooperative approved by CCC to participate in loan and LDP programs for any authorized commodity.

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain marketing assistance loans or Loan deficiency payments.

Cooperative is a business owned and controlled by the producers who use its services and operated under generally accepted cooperative principles.

Eligible commodity is a commodity which meets the commodity’s eligibility requirements set forth in chapter XIV of this title, and is produced and delivered to the CMA from a producer eligible for loan or LDP.

Loan pool is any CMA pool containing commodities used by the CMA to obtain either loans or LDP’s.

Market gain is the sum of loan rate, minus the repayment rate on loans repaid with less than the loan rate, plus for LDP’s, the same rate, times the quantity of commodity. Market gains cannot exceed the producer’s applicable payment limitation as set out in part 1400 of this chapter.

Member is a producer who:
(a) Has fully paid for membership stock or earned equity credits in the CMA;
(b) Has executed a uniform marketing agreement with the CMA; and
(c) Is entitled to all CMA membership rights.

[63 FR 17312, Apr. 9, 1998, as amended at 67 FR 64458, Oct. 18, 2002]

§ 1425.4 Approval.
(a) For a cooperative to gain CMA status to participate in a marketing assistance loan or Loan deficiency payment program for the 2002 through 2007 crop years, a cooperative must submit an application for approval to CCC. An application must include:

(1) A completed Form CCC–846 indicating commodities for which it seeks approval;

(2) A balance sheet, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the balance sheet was prepared in accordance with generally accepted accounting principles;

(3) A copy of the articles of incorporation or articles of association and all marketing agreements for loan pools, together with a certification that this material is current;

(4) Resolutions made by the cooperative’s board of directors stating the cooperative will abide by provisions of this part, the nondiscrimination provisions thereof, and all other related CCC policies;

(5) A detailed description of how proceeds from each loan pool will be distributed to members as provided for in §1425.18;

(6) An executed form CCC-Cotton G, Cotton Cooperative Loan Agreement, by cooperatives applying for approval to participate in the cotton loan and LDP program; and

(7) Other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative requested by CCC related to the cooperative’s proposed methods of conducting CCC loan and LDP business.

(b) A CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1, which shall disclose:

(i) The number of active and inactive CMA members;
§ 1425.5 Confidentiality.

Information submitted to CCC related to trade secrets, financial or commercial operations, or the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers, agents, and employees of CCC and the Department of Agriculture except as required to be disclosed by law.

§ 1425.6 Approved CMA's.

(a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain marketing assistance loans and LDP's.

(b) CCC may approve a CMA to participate in a marketing assistance loan and Loan deficiency payment program for the 2002 through 2007 crops as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c) If CCC determines a CMA is in substantial but not total compliance with the requirements of this part, CCC may make the approval conditional on CMA coming into full compliance within a reasonable period of time as specified in the notification of conditional approval.

(d) A CMA is approved to participate in a marketing assistance loan and LDP program until the CMA’s approval is suspended or terminated by CCC.

[63 FR 17312, Apr. 9, 1998, as amended at 67 FR 64459, Oct. 18, 2002]

§ 1425.7 Suspension and termination of approval.

(a) CCC may suspend a CMA from obtaining loans and LDP’s when CCC determines the CMA has not:

(1) Operated according to the CMA’s application for approval or its last recertification submission;

(2) Complied with applicable regulations;

(3) Corrected deficiencies of the CMA’s operation as noted by CCC; or

(4) Violated any of its agreements with CCC.

(b) A suspension may be lifted when CCC determines the CMA has complied with all requirements for approval. When suspensions are not lifted within 1 year, or a shorter time period if so indicated in CCC’s suspension notification, the CMA’s approval automatically terminates.

(c) CCC may terminate a CMA’s approval by giving the CMA written notice of the termination.

(d) A CMA may, when it does not have any marketing assistance loans outstanding, through written notice to CCC, voluntarily terminate its participation in a loan and LDP program.

(e) CCC may, on demand, call all outstanding CCC loans made to a suspended or terminated CMA. When loans are called, CCC will provide at least 10 calendar days written notice to the CMA. Commodities pledged as collateral for loans must be repaid by the date specified by CCC. If redemption is
Commodity Credit Corporation, USDA

not made by the date specified, title to the commodity shall vest in CCC and CCC shall have no obligation to pay the commodity’s market value above the principal amount of such loans.

§ 1425.8 Ownership and control.
(a) CMA’s must be owned and controlled by active members of the CMA.
(b) The CMA must provide evidence that:
(1) Active members own more than 50 percent of its allocated equity; and
(2) A majority of directors are active members of the CMA or authorized representatives of active members.
(c) An applicant cooperative or a CMA, not under the ownership or control, of its active members, may be approved by CCC if it is able to establish that, by retiring the equity of its inactive members or by obtaining new members, it can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Open membership.
(a) The CMA shall provide CCC documented proof that the CMA admits every membership applicant who is eligible under the statute regulating the CMA.
(b) Notwithstanding paragraph (a) of this section, a CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

§ 1425.10 Financial ratio requirement.
To be financially able to make advances to their members and to market their commodities, CMA’s shall have a current ratio of at least 1 dollar of current assets for each 1 dollar of current liabilities (current ratio of 1:1 or better) on the balance sheet it submits to CCC with its initial application or annual recertification required in § 1425.4.

§§ 1425.11–1425.12 [Reserved]

§ 1425.13 Uniform marketing agreement.
(a) A CMA must enter into a uniform marketing agreement with each member who delivers a commodity to a loan pool.
(b) The identification number used by the member to report acreage on applicable farms to FSA must appear on the marketing agreement.

§ 1425.14 Member business.
(a) At least 50 percent of a crop of an authorized commodity acquired by, or delivered to, a CMA for marketing must be produced by its members for the CMA to obtain a loan or LDP for such crop. CCC may, for a period not to exceed 2 years, waive this requirement if:
(1) The CMA can establish to CCC that such authorization is necessary for the efficient operation of the CMA; and
(2) The CMA’s plan, approved by CCC, will bring the CMA into compliance with the provisions of this section.
(b) Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.
The marketing agreement between the CMA and its members shall give the CMA the authority to pledge the commodity as collateral for a loan, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§ 1425.16 Payment limitation.
CMA’s shall monitor market gains they receive from CCC on behalf of their members and not obtain market gains for a member above the member’s payment limitation determined in accordance with part 1400 of this chapter.

§§ 1425.17 Eligible commodity and pooling.
(a) A CMA may establish separate loan pools as needed for quantities of a commodity.
(b) Loans and, if applicable, LDP’s will be available to CMA’s for any eligible commodity in a loan pool as provided in paragraph (e) of this section.
§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP’s for any quantity in a loan pool, the related proceeds shall be distributed or otherwise made available to the members account:

and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans and LDP’s if:

(1) All of the commodity in the pool is eligible for loans or LDP’s, except as provided in paragraphs (d) and (e) of this section;

(2) The commodity was delivered by members to the CMA for their benefit;

(3) The commodity was delivered and the members are eligible for loans and LDP’s;

(4) Members retain the right to share in marketing proceeds from the commodity in accordance with §1425.18; and

(5) Members agreed to accept a payment of initial advances from the CMA in accordance with §1425.18(a).

(d) Ineligible commodities may be included in eligible pools when:

(1) The CMA inadvertently included ineligible quantities based on grade, quality, bale weight or repacking in the case of cotton, or other factors; or

(2) There are eligibility discrepancies within FSA records, the producer has certified to the CMA that the commodity is eligible for loan, and there is no market gain or LDP involved in the loan pool for the crop year.

(e) A CMA may, for a period of time as specified in Handbook 1–CMA, include a commodity that is ineligible based on FSA records when the producer has certified to the CMA that the commodity is eligible. In these instances, CCC specifies a time period during which CMA’s may obtain loan or LDP’s on the applicable quantity while the eligibility status is resolved. If the final resolution is that the commodity was ineligible, the CMA must repay any loans outstanding with principal plus interest and any market gains obtained plus interest from the date of receiving the market gain through the repayment date.

(f) The CMA must have in inventory a quantity of commodity delivered by members of each class and grade at least equal to the quantity each class and grade pledged as loan collateral.

(g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA’s loan pool.

(h) A CMA shall have identity-preserved loan pool commodities stored in approved warehouses while the commodities are pledged as collateral for loan.

(i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(j) Commodities pledged as collateral for CCC loans shall be free and clear of all liens and encumbrances based on a CMA’s financial agreements or the CMA shall obtain a completed form CCC–679, Lien Waiver. When liens are applicable based on CMA financial agreements, the CMA shall provide CCC the completed CCC–679. CMA’s shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan or LDP is obtained for any quantity in a loan pool, allocations of costs and expenses among separate pools for the commodity in the pool shall be made according to generally accepted accounting principles.

(l) A CMA shall not apply marketing losses from a commodity not used to obtain a loan or LDP against the marketing proceeds of a commodity used to obtain a loan or LDP.

(m) CMA’s shall not carry forward losses from one loan pool and apply them against a subsequent loan pool without CCC’s authorization. CCC may grant authorization when it determines that carrying forward the loss complies with CCC’s loan and LDP program intent.

(n) The CMA is responsible to CCC for any loss related to commodities the CMA pledged as collateral for loan or used to obtain LDP related to:

(1) The CMA failing to comply with these regulations;

(2) Changes in quantity or quality of either warehouse or farm stored commodities; or

(3) Liens based on either the CMA’s or its members’ financial agreements.

§ 1425.18 Distribution of proceeds.
§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries shall be maintained for five years after the applicable crop year and shall be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.
§ 1425.23 Reports.

(a) CMA's shall annually provide CCC a report of all commodity deliveries involved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's shall report market gains received on behalf of each member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§ 1425.25 Appeals.

Parts 11 and 780 of this title apply to this part.

[67 FR 64459, Oct. 18, 2002]

PART 1427—COTTON

Subpart A—Nonrecourse Cotton Loans and Loan Deficiency Payments

Sec.
1427.1 Applicability.
1427.2 Administration.
1427.3 Definitions.
1427.4 Eligible producer.
1427.5 General eligibility requirements.
1427.6 Disbursement of loans.
1427.7 Maturity of loans.
1427.8 Amount of loan.
1427.9 Classification of cotton.
1427.10 Approved storage.
1427.11 Warehouse receipts.
1427.12 Liens.
1427.13 Fees, charges and interest.
1427.14 [Reserved]
1427.15 Special procedure where funds are advanced.
1427.16 Movement and protection of warehouse-stored cotton.
1427.17 [Reserved]
1427.18 Liability of the producer.
1427.19 Repayment of loans.
1427.20 Handling payments and collections not exceeding $9.99.
1427.21 Settlement.
1427.22 Commodity certificate exchanges.
1427.23 Cotton loan deficiency payments.
1427.24 [Reserved]
1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

7 CFR Ch. XIV (1–1–14 Edition)

Subpart B [Reserved]

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

1427.100 Applicability.
1427.101 Eligible upland cotton.
1427.102 Eligible domestic users.
1427.103 Upland cotton Domestic User Agreement.
1427.104 Payment rate.
1427.105 Payment.

Subpart D—Recourse Seed Cotton Loans

1427.160 Applicability.
1427.161 Administration.
1427.162 [Reserved]
1427.163 Disbursement of loans.
1427.164 Eligible producer.
1427.165 Eligible seed cotton.
1427.166 Insurance.
1427.167 Liens.
1427.168 [Reserved]
1427.169 Fees, charges, and interest.
1427.170 Quantity for loan.
1427.171 Approved storage.
1427.172 Settlement.
1427.173 Foreclosure.
1427.174 Maturity of seed cotton loans.
1427.175 Liability of the producer.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

1427.1081 General statement and administration.
1427.1082 Basic standards.
1427.1083 Bonding requirements for net worth.
1427.1084 Examination of warehouses.
1427.1085 Exceptions.
1427.1086 Approval of warehouse, requests for reconsideration.
1427.1087 Exemption from requirements.
1427.1088 Contract fees.
1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

Subpart F [Reserved]

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

1427.1200 Applicability.
1427.1201 [Reserved]
1427.1202 Definitions.
1427.1203 Eligible ELS cotton.
1427.1204 Eligible domestic users and exporters.
1427.1205 ELS Cotton Domestic User/Exporter Agreement.
1427.1206 Form of payment.
1427.1207 Payment rate.
1427.1208 Payment.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 2008 through 2012 crops of upland cotton and extra long staple cotton. Rules codified in this part which are issued after October 1, 2008, will not affect the 2007 and prior crops except that changes in the calculation of loan repayment rates that apply to the 2008 crop also apply to 2007 crop loans outstanding at the time of the changes in 2008 crop calculations. Other adjustments for the 2008 crop, such as storage rate adjustments will not apply. These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payment programs shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and loan deficiency payments.

(b) The basic loan rate, the schedule of premiums and discounts, and forms applicable to the cotton marketing assistance loan and loan deficiency payment programs are available from FSA offices. The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Marketing assistance loans and loan deficiency payments will not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Notwithstanding the other provisions of this part, a producer may only receive the maximum assistance allowed by part 1400 of this chapter.

(e) Eligible producers, under 7 CFR 1421.4, who produce upland cotton during the 2008 through 2012 crop years on a farm that is not covered under a direct and counter-cyclical program contract, as defined in part 1412 of this chapter, are eligible for marketing assistance loans or loan deficiency payments as are eligible producers who produced commodities on farms covered by such a contract.

§ 1427.2 Administration.

(a) The marketing assistance loan and loan deficiency payment programs shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out by FSA employees, and state and county committees.

(b) No FSA employee or committee may modify or waive any requirement in this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) Correct, or require a correction of an action that is not in compliance with this part; or

(2) Stop an employee from taking an action or decision that is not in accordance with the regulations of this part.

(d) The Executive Vice President, CCC, or a designee may determine any question arising under these programs, and reverse or modify a determination made by an FSA employee or State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the marketing assistance and loan deficiency payment programs.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.
§ 1427.3 Definitions.

The definitions in this section shall apply for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in part 718 of this title and parts 1412, 1421, 1423, 1425, and 1434 of this chapter shall also apply, except where they conflict with definitions in this section.

Adjusted spot price means the spot price adjusted to reflect any lack of data for base quality to make the adjusted spot price comparable to a spot price assuming the base quality. If base quality spot price data are not available, spot prices for other qualities will be used and adjusted by the average difference between base quality spot prices and those for other qualities over the available observations during the previous 12 months.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved under part 1425 of this chapter which has executed a Cotton Cooperative Loan Agreement on a form prescribed by CCC.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately before use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Classification means the measurement results provided by the Agricultural Marketing Service (AMS) of color grade, leaf, staple, strength, extraneous matter, and micronaire, and for upland cotton, length uniformity.

Commodity certificate exchange means the exchange, as provided in part 1404 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Consumption means the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton means upland cotton and extra loan staple cotton meeting the definition in the definitions of “upland cotton” and “extra long staple (ELS) cotton” in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Cotton storage deficit area means a State, County, or group of contiguous counties within a State, where the production of cotton for the area based on the most recent estimate from the USDA, National Agricultural Statistics Service exceeds the combined approved inside storage capacity less carry-in stocks, of warehouses that have entered into a Cotton Storage Agreement with CCC.

Current Far East shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 13⁄32 inch cotton, CFR (cost and freight) Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Electronic Agent Designation is an electronic record that:

(1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specific loan;

(2) Is maintained by providers of electronic warehouse receipts; and

(3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:
Commodity Credit Corporation, USDA § 1427.3

(1) American-Pima;
(2) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and
(3) Any other variety of cotton in which one or more of these varieties predominate.

False packed cotton means cotton in a bale containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:
(1) A bank in the United States which accepts demand deposits; and
(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a nonrecourse loan entered into between a producer and CCC.

Form G loan means a CCC non-recourse loan entered into between a CMA and CCC.

Good condition means a bale of cotton that, by comparison with the photographic standards of “A Guide for Cotton Bale Standards” of the Joint Cotton Industry Bale Packaging Committee, is determined to be a Grade A or Grade B bale.

Lint Cotton means cotton that has passed through the ginning process.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable loan rate.

Loan rate is the national loan rate for base quality upland cotton and the national average rate for ELS cotton adjusted by any premiums and discounts determined by CCC.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;
(2) Disbursing loan and loan deficiency payment proceeds;
(3) Accepting loan repayments;
(4) Handling documents involved with forfeiture of loan collateral to CCC; and
(5) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Transfer means, depending on the context, the process for a producer or an authorized agent of the producer to:
(1) Physically relocate cotton loan collateral from one CCC-approved warehouse to another CCC-approved warehouse,
(2) Exchange an electronic warehouse receipt for a receipt certificated by a warehouse for delivery under a futures contract without physically relocating the cotton, or
(3) Do both of the above.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

Warehouse receipt means a receipt containing the required information prescribed in this part that may or may not be certificated for delivery for a futures-pricing contract, and is:
(1) For 2008-crop cotton only, a pre-numbered, pre-punched negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC; or
(2) For 2008 through 2012-crop cotton, an electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system.

Wet cotton means a bale of cotton that, at a gin, has 7.5 percent or more moisture, wet basis, at any point in the bale.

§ 1427.4 Eligible producer.
(a) To be an eligible producer, the producer must:
(1) Be an individual, partnership, association, corporation, estate, trust, or other legal entity that produces cotton as a landowner, landlord, tenant, or sharecropper;
(2) Comply with all provisions of this part; and
(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;
(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;
(iii) 7 CFR part 1400—Payment Limitation and Payment Eligibility;
(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures; and
(v) 7 CFR part 1405—Loans, Purchases and Other Operations; and
(3) Have made an acreage certification with respect to all the cropland on the farm.
(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.
(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:
(1) The right of majority has been conferred on the minor by court proceedings or by statute;
(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;
(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.
(e) A CMA may obtain a marketing assistance loan and loan deficiency payments on eligible cotton on behalf of its members who are eligible to receive loans or loan deficiency payments for a crop of cotton. For purposes of this subpart, the term “producer” includes a CMA.
(f) In case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon application to CCC, be made to the persons who would be entitled to the producer's payment under the regulations contained in part 707 of this title.

§ 1427.5 General eligibility requirements.
(a) To receive loans or loan deficiency payments for a crop of cotton, a
Commodity Credit Corporation, USDA § 1427.5

producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the applicant and submitted to CCC or a loan servicing agent. Submissions by cotton clerks must occur within 15 calendar days after the producer signs the forms and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office that is responsible under part 718 of this title for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the cotton commercial bank within the period of loan availability.

(b) For a bale of cotton to be eligible to be pledged as collateral for a marketing assistance loan or a subject of a loan deficiency payment application, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition and be covered by fire insurance. Bales pledged as collateral for a CCC loan, must be stored inside an approved storage warehouse unless, as determined under §1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan. Bales submitted to CCC for a loan deficiency payment are not subject to the approved storage requirements contained in §1423.10.

(3) Be represented by a warehouse receipt meeting the requirements of §1427.11, except as provided in §§1427.10(e) and 1427.23(a)(4);

(4) Not be false-packed, wet cotton, water-packed, mixed-packed, reginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied and effective for the 2009 crop, not be a flat or modified flat bale;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in §1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds net weight may be pledged for loan at 600 pounds net weight.

(10) Be packaged in materials that meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable year or that are identified and approved by the Joint Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year, except that producers approved for the outside storage of ELS cotton as provided for in §1427.10(e) must assure that the packaging materials used for bales stored outside must meet the materials, sealing, and humidity specifications contained in the outside-storage addendum to their ELS cotton marketing assistance loan agreement.

(11) Be ginned by a ginner that:

(i) Has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Has entered into a Cooperating Ginners’ Bagging and Bale Ties Certification and Agreement on a form prescribed by CCC, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section and;

(12) Be production from acreage that has been reported timely under part 718 of this title.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be of a grade, strength, staple length, and other factors specified in
the schedule of loan rates for ELS cotton;

(2) Have a micronaire specified in the schedule of micronaire premiums and discounts for ELS cotton; and

(3) Have an extraneous matter specified in the schedules of premiums and discounts for extraneous matter for ELS cotton.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been graded by using a High Volume Instrument;

(2) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(3) Have a strength reading specified in the schedule of strength premiums and discounts for upland cotton;

(4) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(5) Have an extraneous matter within the limits specified in the schedule of discounts for extraneous matter for upland cotton;

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the cotton that is tendered to CCC for a marketing assistance loan or loan deficiency payment. For the purposes of this part, the term “beneficial interest” refers to a determination by CCC that a person has the requisite title to and control of cotton that is tendered to CCC as collateral for a marketing assistance loan or is the cotton that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in cotton is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(f) Except as provided in paragraph (h) of this section, when requesting a marketing assistance loan, in order to have beneficial interest in the cotton tendered as collateral for the loan, a person must:

(1) Be the producer of the cotton as determined in accordance with §1427.4;

(2) Have had ownership of the cotton from the time it was planted through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the cotton from the time of planting through the maturity date of the loan. To have control of the cotton, such person must have complete decision making authority regarding whether the cotton will be tendered as collateral for a loan, when the loan will be repaid or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the cotton will be maintained during the term of the loan; and

(g) Except as provided in paragraph (h) of this section, when requesting a loan deficiency payment, in order to have beneficial interest in the cotton a person must:

(1) Be the producer of the cotton as determined in accordance with §1427.4;

(2) Have had ownership of the cotton from the time it was planted through the date the producer has elected to determine the loan deficiency payment rate; and

(3) Have control of the cotton from the time of planting through the date the producer has elected to determine the loan deficiency payment rate. To have control of the cotton, such person must have complete decision making authority regarding whether a loan deficiency payment will be requested with respect to the cotton; when the loan deficiency rate will be selected; and where the cotton will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) If the cotton has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the cotton to a warehouse approved in accordance with §1427.10. Delivery of the cotton to a location other than to such an approved warehouse will result in the loss of beneficial interest in the cotton on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day regardless of any other action or agreement between the entity where the cotton was delivered and the producer, unless such an entity has been approved by CCC under §1427.10.
(h) Notwithstanding paragraphs (f) and (g) of this section, in order to facilitate the handling of situations involving the death of a producer, CCC will consider an estate and a person to whom title to cotton has passed by virtue of State law upon the death of the producer to have beneficial interest in the cotton produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(i) Notwithstanding paragraphs (f) and (g) of this section, a person who purchases or otherwise acquires cotton from a producer under any circumstances does not obtain beneficial interest to the cotton whether such purchase or acquisition is made prior to the harvest of the crop or after harvest except in one instance. CCC will consider a person to have beneficial interest in cotton if, prior to harvest, such person has obtained title to the growing cotton at the same time that such person obtained full title to the land on which such crop was growing;

(j) A producer will lose beneficial interest in cotton if the producer receives any payment from any person under any contractual arrangement with respect to cotton if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the cotton or control of the cotton prior to or after harvest unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the cotton and such option contains the following provision:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the cotton and beneficial interest in the cotton as specified in 7 CFR 1427.5 shall remain with the producer until the buyer exercises this option to purchase the cotton. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such cotton;

(2) The date CCC claims title to such cotton; or

(3) Such other date as provided in this option.

(k) Absent other provisions causing the producer to lose beneficial interest in the cotton, inclusion in a contract of a provision that allows the producer to select the sales price of the cotton at the time the contract is entered into or at a later date, a contract normally referred to as a deferred price contract or a price later contract, will not result in the loss of beneficial interest in the cotton.

(l) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if at the time of the request for such a loan or payment the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

(m) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn under Agricultural Marketing Service (AMS) dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(n) Marketing assistance loans may be disbursed to eligible producers who store upland cotton in unapproved storage facilities only if the producer agrees to redeem the marketing assistance loan on the date on which the loan is disbursed with a commodity certificate exchange.

(o) If marketing assistance loans or loan deficiency payments are made
available to producers through a CMA under part 1425 of this chapter, the beneficial interest in the cotton must always have been held by the producer-member who delivered the cotton to the CMA or its member, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a marketing assistance loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.


§ 1427.6 Disbursement of loans.

(a) Individual producers may request loans from:
(1) FSA County Service Centers;
(2) Loan servicing agents; or
(3) An approved cotton clerk who has entered into a written agreement with CCC on a form prescribed by CCC.

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible under §1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.


§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed under §1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.


§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The loan rate as determined under paragraph (a) of this section adjusted for applicable premiums and discounts will be reduced by 30 percent during

Commodity Credit Corporation, USDA

§ 1427.9 Classification of cotton.

(a) All cotton tendered for loan and loan deficiency payment must be classed by an AMS Cotton Classing Office or other entity approved by AMS.

(b) An AMS cotton classification must be based upon a representative sample drawn from the bale by samplers under AMS procedures and instructions.

(c) If the producer’s cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse must sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by AMS. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved:

(1) If through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate will be based on the classification having the lower loan value;

(2) CCC will use classification information received directly from AMS rather than AMS classification information received from the producer.

(f) CCC will base any cotton loan rate or loan deficiency payment rate on the most recent classification information available before the loan or loan deficiency payment has been calculated. CCC will not adjust such rates based on review classification information submitted subsequent to the original benefit calculation.


§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC, unless the producer agrees to provisions of 1427.5(n).

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office Beacon Facility-Mail Stop 8746, P.O. Box 412065, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, as directed by CCC place such cotton within such warehouse.

(c) An approved cotton storage warehouse may temporarily store cotton pledged as collateral for a CCC loan outside, subject to the following conditions:

(1) The warehouse submits a request for approval of outside storage in a format prescribed by CCC.

(2) The warehouse is located in a storage deficit area as determined by CCC.

(3) The warehouse complies with all outside storage requirements established by CCC including but not limited to the duration of such outside storage as granted by CCC for the individual application, all-risk insurance for the loan value of the cotton with CCC as loss payee, and use of additional protective coverings and materials that elevate the entire bottom surface of the bale to protect such cotton from damage by water or airborne contaminants.

(4) The electronic warehouse receipt for any bale or bales of cotton pledged as collateral for a CCC loan must include the dates that the bale was initially stored outside, and the date that outside storage stopped.

(5) The warehouse operator provides CCC:

(1) A weekly report in a format prescribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside, and
§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or before the date the producer signs the note and security agreement.

(b) Warehouse receipts, under § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its terms the tare and the net weight of the bale represented by the receipt. The net weight shown on the warehouse receipt must be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if gin weights are permitted by the licensing authority for the warehouse.

(2) The tare weight shown on the receipt must be the tare weight furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare weight, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact.

(f) The warehouse receipt must show the compression status of the bale; i.e., flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

§ 1427.12 Liens.

(a) Waivers that fully protect the interest of CCC must be obtained before loan disbursement, notwithstanding provisions in §1427.19(h), if there are any liens or encumbrances on the cotton tendered as collateral for a loan.
even though the liens or encumbrances are satisfied from the loan proceeds, except that CCC may elect to waive such lien requirements for loans having a principal value of less than $50,000.

(b) CCC may elect to accept cotton as loan collateral that has warehouse receiving, compression, or other charges without a lien waiver if the producer at the time of loan application agrees to reimburse CCC for any such charges that CCC may pay on behalf of the producer or that reduce the value of the cotton delivered to CCC.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008]

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Such fee shall be in addition to a cotton clerk fee paid under paragraph (b) of this section. The fee amounts are available in State and county offices and are shown on the note and security agreement. Fees shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available from CCC and is shown on the note and security agreement.

(c) Interest which accrues for a loan shall be determined under part 1405 of this chapter. All or a portion of such interest may be waived for a quantity of upland cotton which has been redeemed under §1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elect to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents were provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in §1427.11.

(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that:

(i) Exceed CCC’s maximum storage credit rate for the warehouse established in §1427.19 and

(ii) Were paid by CCC for periods subject to denied storage credits due to the cotton being stored outside as specified in §1427.19(h)(2)(ii).

(4) Unpaid warehouse compression charges.


§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on cotton eligible to be pledged as collateral for a marketing assistance loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of
§ 1427.16 Movement and protection of warehouse-stored cotton.

(a) CCC may insure or reinsure stored cotton against any risk, or otherwise take an action it deems necessary to protect the interest therein of CCC.

(b) A producer may transfer cotton loan collateral subject to the following conditions:

(1) The cotton is represented by an electronic warehouse receipt;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator;

(4) The CCC marketing assistance loan that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC; and

(5) The interest will be computed on the total amount invested by the person, firm, or financial institution in the marketing assistance loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by CCC.

(6) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(7) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by CCC after the end of the month.
(5) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under this paragraph must be paid by the requestor of the transfer.

(c) CCC will exclude from the calculation of any storage credits payable under §1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(i) Not in compliance with any of the terms of its Cotton Storage Agreement, (ii) Storing cotton loan collateral outside, or

(iii) Under common ownership with the receiving warehouse.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008]

§ 1427.17 [Reserved]

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a marketing assistance loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the marketing assistance loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC for the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages under paragraph (e) of this section; and

(vi) About amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in §1427.19.

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved the loan collateral without prior written approval from CCC, the value of such collateral will be equal to its loan value, plus accrued interest, plus warehouse charges, and liquidated damages, as determined by CCC.

(b) If the amount disbursed under a marketing assistance loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the marketing assistance loan or loan deficiency payment is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and this subpart. Each producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to their share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application for the producer’s claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or
moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity involved in the violation. Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(f) When it has been determined that a violation of the terms and conditions of a loan deficiency application has occurred, CCC will determine the quantity of the cotton involved with respect to such violation and assess liquidated damages by multiplying the quantity of cotton involved in the violation by 10 percent of the marketing assistance loan rate.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

1. Assess liquidated damages under paragraph (e) of this section; and
2. Call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and for a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation under paragraph (e) of this section, CCC shall notify the producer in writing that:

1. The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and
2. Administrative actions will be taken under paragraph (f) or (g) of this section.

(i) If CCC accelerates the maturity date for a loan under this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate under §1427.19 or utilize the provisions of part 1401 of this chapter for such loan.

(j) Any or all of the liquidated damages assessed under paragraph (e) of this section may be waived as determined by CCC.

(k)(1) Notwithstanding any other provision of this part, for ELS cotton stored as provided in §1427.10(f), the producer shall be liable for all costs associated with the storage of the cotton while it is stored outside. CCC shall make no storage payment or any other payment with respect to ELS cotton stored as provided in §1427.10(f).

2. The producer of ELS cotton which is stored as provided in §1427.10(f) shall:

(i) Certify the quantity of such cotton on the loan application; certify the cotton is packaged in a hermetically sealed bag with an internal humidity level established by the gin as appropriate to safeguard the cotton; certify that packaging materials meet or exceed industry minimum standards; certify that the storage area is suitable for cotton storage and is in an area approved by CCC; certify that the storage area is constructed to prevent water accumulation under the cotton and is outside a 100-year floodplain; and certify that the storage area is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the storage area;

(ii) Be responsible for any loss in quantity or quality of such cotton;

(iii) If the loan is satisfied by forfeiting the cotton to CCC, be responsible for all costs associated with delivering such cotton to a warehouse designated by CCC, all costs associated with any re-classification and repackaging that may be required by CCC or the warehouse operator to whom the cotton is delivered, all charges by the receiving warehouse for receiving the cotton and issuing an electronic warehouse receipt for the cotton, and other charges as may be levied by the warehouse specific to outside-stored cotton; and

(iv) Not move such cotton after the loan application is submitted to CCC without prior written approval of the county committee. Failure of the producer to receive such permission shall
subject the producer to administrative actions.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts pledged as collateral for a CCC loan will not be released except as provided in this section.

(b) A producer, an authorized agent or anyone subsequently designated by the producer in the manner prescribed by CCC may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined under this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized in writing in a manner prescribed by CCC may repay the loan amount for one or more bales of cotton pledged as collateral for a marketing assistance loan:

(1) For upland cotton, at a level that is the lesser of:
(i) The loan level and charges, plus interest determined for such bales; or
(ii) The adjusted world price, as determined by CCC under §1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or cotton commercial bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(3) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton under §1427.7.

(g) In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under §1427.25(e).

(h) For purposes of calculating loan-period accrued storage charges that CCC may credit to the loan repayment amount under paragraph (i) of this section:

(i) The warehouse storage rates to be used for the 2008 through 2011 crops will be the lower of:

(1) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California $3.93 per bale per month and for warehouses located in all States other than Arizona and California $2.39 per bale per month.

(2) The warehouse storage rates to be used for the 2012 and subsequent crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California $3.50 per bale per month and for warehouses located in all States other than Arizona and California $2.13 per bale per month.

(3) CCC will not credit the loan repayment amount for a bale for any storage charges that accrued while the cotton was stored outside, except that storage may be credited for up to 15-days of outside storage beginning on the day the warehouse was notified that the bale is under loan if the bale was inside on the 15th day from the date of notification.

(4) The loan period will be determined by CCC to begin:

(i) For loan disbursed by the Farm Service Agency, on the date all loan documents, as determined and announced by CCC, have been received or

(ii) For a loan disbursed by a Cooperative Marketing Association or an authorized loan servicing agent, on the date the loan was disbursed by CCC.

(i)(1) An upland cotton loan repayment rate will not exceed the loan
§ 1427.20 Handling payments and collections not exceeding $9.99.

Amounts of $9.99 or less will be paid to the producer only at their request. Deficiencies of $9.99 or less, including interest, may be disregarded unless CCC demands in writing that they be paid.

§ 1427.21 Settlement.

(a) The settlement of cotton loans will be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC subject to the producer being responsible for, if applicable, warehouse receiving charges, new bale ties, unpaid warehouse compression, charges for and related to the certification of a bale and for any subsequent exchange of certificated receipts, storage charges for any period of yard storage, and storage charges in excess of any maximum storage credit rates as determined and announced by CCC.

(b) For purposes of settlements for cotton delivered to CCC in satisfaction of a loan obligation, CCC may elect to calculate such settlement values based on the net weight, condition, and classification as reflected on the warehouse receipt delivered to CCC, whether such receipt is the receipt issued by the original storing warehouse and presented for calculating the loan amount or a receipt issued by a subsequent warehouse due to the transfer of such bale while pledged as collateral for a CCC loan.

(c) If a producer does not pay CCC the amount due under a loan, CCC shall take title to the cotton as provided in §1427.7(b).

(d) With respect to ELS cotton which is stored as provided in §1427.10(f), settlement of loans shall be made based upon the determination of the quantity and quality made by CCC at the time of acceptance of the cotton by CCC at the warehouse designated by CCC as provided in §1427.19(c).

(e) If CCC sells the commodity described in paragraph (a) of this section in settlement of the recourse loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. When CCC sells any cotton obtained by forfeiture under a marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the cotton and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the cotton to CCC.

(f) CCC will pay to the warehouse any unpaid storage or receiving charges for forfeited loan collateral, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the loan maturity date, as soon as practicable after the cotton is forfeited.


§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.
Commodity Credit Corporation, USDA

§ 1427.23 Cotton loan deficiency payments.

(a) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton marketing assistance loan eligibility requirements under this subpart;

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

(3) Submit, on a form prescribed by CCC, to the FSA Service Center on or before beneficial interest is lost in such quantity and before the final loan availability date for the commodity:

   (i) An indication of their intentions to receive a loan deficiency payment on the identified commodity or
   (ii) A completed request for a loan deficiency payment for a quantity of eligible cotton under §1427.5(a).

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) For loan deficiency payments requested before ginning of the cotton based on a locked-in adjusted world price, provide identifying numbers for modules or other storage units that will correspond to the gin-assigned numbers of the bales produced from the unginned cotton; and

(6) Otherwise comply with all program requirements.

(b) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined under paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan, excluding any quantity for which the producer obtains a marketing assistance loan.

(c) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC under §1427.25, in effect on the day the request is received by the county office, loan servicing agent, or cotton commercial bank. In no case shall the loan deficiency payment rate for a bale exceed the value of the bale had it been pledged as collateral for a marketing assistance loan.

(d) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(e) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified under §1427.5(c) on the date the cotton was ginned, and the producer meets all the other requirements in paragraph (a) of this section on or before the final date to apply for a loan deficiency payment under §1427.5, the loan deficiency payment rate applicable to such cotton will be:

   (1) Based on the date the cotton was ginned, which CCC will consider to be the date of the LDP request, if payment application is made in the manner prescribed by CCC for obtaining such rate;

   (2) Based on the date of request for lock-in of the adjusted world price if payment application is made in the manner prescribed by CCC for obtaining such rate; or

   (3) Based on the date a completed request including production evidence is submitted in the manner prescribed by CCC for obtaining such rate.
§ 1427.24

(f) In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. Eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under §1427.25(e).


§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC will determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1⅜-inch) cotton, CFR (cost and freight) Far East, the prevailing world market price for upland cotton will be based on the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1⅜-inch cotton, CFR Far East.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current Far East shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward Far East shipment price) are available for growths quoted for M 1½-inch cotton, CFR Far East, the prevailing world market price for upland cotton will be based on the average of the current Far East shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1½-inch cotton, CFR Far East.

(b) The upland cotton prevailing world market price, adjusted as specified in paragraph (c) of this section (adjusted world price (AWP)), will apply to the 2008 through 2012 crops of upland cotton and to the 2007 crop to the extent provided in §1427.1.

(c) The upland cotton AWP will equal the FE determined as specified in paragraph (a) of this section, adjusted as follows:

(1) FE will be adjusted to U.S. location by deducting the average costs to market, including average transportation costs, as determined by the Secretary.

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for base quality M 1⅜-inch, leaf 3 cotton and the loan rate for base quality SLM 1⅜-inch, leaf 4 cotton.

(3) The prevailing world market price, adjusted as specified in paragraphs (c)(1) and (c)(2) of this section, may be further adjusted if it is determined that the adjustment is necessary to:

(i) Minimize potential loan forfeitures;

(ii) Minimize the accumulation of stocks of upland cotton by the Federal Government;

(iii) Ensure that upland cotton produced in the United States can be marketed freely and competitively, both domestically and internationally; and

(iv) Ensure an appropriate transition between current-crop and forward-crop price quotations, except that forward-crop price quotations may be used prior to July 31 of a marketing year only if there are insufficient current crop quotations and the forward-crop price quotation is the lowest such quotation available.
(d) The upland cotton AWP, determined as specified in paragraph (c) of this section, and the amount of the additional adjustment determined as specified in paragraphs (e) and (f) of this section, will be announced, to the extent practicable, at 4 p.m. eastern time each Thursday continuing through the last Thursday of March 2014 (March 27, 2014). In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next work day.

(e)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further coarse count adjustment as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of 1\(\frac{1}{2}\)-inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade, leaf, and staple length must be determined as specified in §1427.9. If no such official classification is presented, the coarse count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (e)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ‘‘coarse count’’ cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ‘‘coarse count’’ cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1\(\frac{1}{2}\)-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1\(\frac{1}{2}\)-inch, leaf 4 cotton.

(f)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further fine count adjustment as provided in this section regarding all upland cotton having a loan schedule premium or discount exceeding that for Middling, leaf 3, staple length 1\(\frac{1}{2}\)-inch upland cotton, and

(ii) Grade, staple length, and leaf must be determined as specified in §1427.9. If no such official classification is presented, the fine count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (f)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ‘‘fine count’’ cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ‘‘fine count’’ cotton, CFR Far East (Far East coarse count price); or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for ‘‘coarse count’’ cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ‘‘coarse count’’ cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1\(\frac{1}{2}\)-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1\(\frac{1}{2}\)-inch, leaf 4 cotton.
(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for “fine count” cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “fine count” cotton, CFR Far East (Far East fine count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 13/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 11/8-inch, leaf 2 cotton.

(3) Regarding the determination of the Far East fine count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) In the determination of FE as specified in paragraph (a)(2) of this section, the Far East coarse count price specified in paragraph (e)(2)(i)(B) of this section, and the Far East fine count price as specified in paragraph (f)(2)(i)(B) of this section, CCC will use either current Far East shipment prices, forward Far East shipment prices, or any combination thereof to determine FE or the Far East coarse count price or the Far East fine count price used in the determination of the adjustment for upland cotton specified in paragraphs (e)(1) and (f)(1) of this section and determined as specified in paragraphs (e)(2) and (f)(2) of this section to prevent distortions in such adjustment.

(h) For particular bales, the AWP determined as specified in paragraph (c) of this section, will be subject to further adjustments to a value no less than zero, as CCC determines, based on the Schedule of Premiums and Discounts as announced for the loan program for an upland cotton crop.


Subpart B [Reserved]

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

SOURCE: 73 FR 65723, Nov. 5, 2008, unless otherwise noted.

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable beginning August 1, 2008. These regulations specify the terms and conditions under which CCC will make payments to eligible domestic users who entered into an Upland Cotton Domestic User Agreement with CCC to participate in the upland cotton domestic user program under section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to commonly as the “2008 Farm Bill”).

(b) CCC will prescribe forms used in administering Economic Adjustment Assistance to Users of Upland Cotton.

§ 1427.101 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is baled upland cotton, regardless of origin, that is opened by an eligible domestic user on or after August 1, 2008, and is either:

(1) Baled lint, including baled lint classified by USDA’s Agricultural Marketing Service as Below Grade;

(2) Loose samples removed from upland cotton bales for classification purposes that have been rebaled;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking, or production of non-woven fabric; or

(4) Re-ginned (processed) motes.

(b) Eligible upland cotton must not be:

(1) Cotton for which a payment, under the provisions of this subpart, has been made available;

§ 1427.100

7 CFR Ch. XIV (1–1–14 Edition)
§ 1427.105 Payment.
(a) Payments specified in this subpart will be determined by multiplying the payment rate, as specified in §1427.104, by

(1) In the case of baled upland cotton, whether lint, loose samples or reginned motes, but not semi-processed motes, the net weight of the cotton used (gross weight minus the weight of bagging and ties);

(2) In the case of unbaled reginned motes consumed, without rebaling, for an end use in a continuous manufacturing process, the weight of the reginned motes after final cleaning; and

(3) In the case of semi-processed motes which are of a quality suitable, without further processing, for spinning, papermaking, or manufacture of non-woven cotton fabric, 25 percent of the weight (gross weight minus the weight of bagging and ties, if baled) of the semi-processed motes; provided further, that with respect to semi-processed motes that are used prior to August 18, 2010, payment may be allowed by CCC in its sole discretion at 100 percent of the weight as determined appropriate for a transition of the program to the 25 percent factor.

(b) In all cases, the payment will be determined based on the amount of eligible upland cotton that an eligible domestic user consumed during the immediately preceding calendar month. For the purposes of this subpart, eligible upland cotton will be considered consumed by the domestic user on the date the bale is opened for consumption, or if not baled, the date consumed, without further processing, in a continuous manufacturing process.

(c) Payments specified in this subpart will be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the Upland Cotton Domestic User Agreement.

(d) All payments received by the agreement holder must be used for purposes as specified in section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, referred to commonly as the 2008 Farm Bill). Authorized expenditures include acquisition,
construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery. Such capital expenditures must be directly attributable and certified as such by the user for the purpose of manufacturing upland cotton into eligible cotton products in the United States.


Subpart D—Recourse Seed Cotton Loans

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.160 Applicability.

(a) This subpart is applicable to the 2008 through 2012 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms that are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates will be based on the base quality loan rate for upland cotton and the national average loan rate for extra long staple cotton.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.


§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not under the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not under the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize waiver or modification of deadlines and other program requirements where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not
executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.162 [Reserved]

§ 1427.163 Disbursement of loans.

(a) A producer or the producer’s agent shall request a loan at the county office for the county which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA’s designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA’s designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer’s agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

An eligible producer must meet the requirements of §1427.4.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of §1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely under part 718 of this title; and

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in §1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a non-refundable loan service fee to CCC at a rate determined by CCC.
§ 1427.170

(b) Interest which accrues for a loan shall be determined under part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined under paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

1. Condition or suitability of the storage site or structure;
2. Condition of the cotton;
3. Location of the storage site or structure; and
4. Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer’s request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer’s farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer’s farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time before maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer’s agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer’s agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer’s name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;
(ii) 5 days after the date of the producer received the AMS classification under §1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or
(iii) The loan maturity date.
(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment under subpart A of this part, on the lint cotton, but:

(i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan under subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved under subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage before obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a nonrecourse loan under subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan under subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and, the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.
§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;
(ii) Any additional amounts paid by CCC for the loan;
(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;
(iv) Applicable interest on such amounts; and
(v) Liquidated damages under paragraph (e) of this section.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;
(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages under paragraph (e) of this section; and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which
Commodity Credit Corporation, USDA § 1427.1081

CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages under paragraph (e) of this section;
(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation under paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and
(2) Administrative actions will be taken under paragraphs (f) or (g) of this section.

(i) Any or all of the liquidated damages assessed under the provision of paragraph (e) of this section may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters


SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as “CCC”) of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the “KCCO”).

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC–49, “Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,” supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA–51 with approval of the Director, KCCO, or the Director’s designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman’s application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity.

(2) A current financial statement on Form WA–51, “Financial Statement”, supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA–51 with approval of the Director, KCCO, or the Director’s designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman’s application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under

639
§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance,

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(4 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985)
(b) Such bond shall be on Form CCC-33, “Warehouseman’s Bond”, except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days’ notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, “Irrevocable Letter of Credit”, or on such other form as may be specifically approved by the Director, KCCO, or the Director’s designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC’s standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity.

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.


§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility
§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 57085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

When appealing under such regulations, the warehouseman shall be considered as a “participant”; and

(2) In §1427.1082(c)(2), the warehouseman’s administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Am. 3, 50 FR 16455, Apr. 26, 1985]
§ 1427.1202 Definitions.

The following definitions apply as used in this subpart:

Consumption means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C/F Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

ELS means Extra Long Staple.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C/F Far East, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost and freight (C/F) Far East, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

(1) Adjusted LFQ means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and destination ports in the Far East.

(2) LFQc means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C/F Far East.

(3) LFQf means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C/F Far East.

USPFE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, C/F Far East.

(1) USPFEc means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, C/F Far East.
(2) USPFEf means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, C/F Far East.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:
(1) Opened by an eligible domestic user on or after June 18, 2008, or
(2) Exported by an eligible exporter on or after June 18, 2008, during a Friday through Thursday period in which a payment rate determined under § 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;
(b) Eligible ELS cotton must be either:
(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or
(2) Loose.
(c) Eligible ELS cotton must not be:
(1) ELS for which a payment, under the provisions of this subpart, has been made available;
(2) Imported ELS cotton;
(3) Raw, unprocessed motes;
(4) Textile mill wastes; or
(5) Semi-processed or re-ginned, processed motes.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:
(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or
(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.
(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.
(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:
(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available, the payment rate shall be the difference between the USPFE and the LFQ in the fourth week of a consecutive 4-week period in which the USPFE exceeded the LFQ each week, and the adjusted LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and
(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available and ending the Thursday following July 31, the payment rate shall be the
difference between the USPFEc and the LFQc in the fourth week of a consecutive 4-week period in which the USPFEc exceeded the LFQc each week, and the adjusted LFQc was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the USPFEc and the LFQc are not available, the payment rate may be the difference between the USPFEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf (spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and USPFEc, in combination with the LFQ and USPFE, shall, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both USPFEc price and the LFQc are not available, the USPFEf and the LFQf in combination with the USPFE price and LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the USPFE, USPFEc, USPFEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the USPFE, USPFEc, or USPFEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate shall be zero and shall remain zero unless and until sufficient USPFE prices or the LFQ again becomes available, the USPFE, USPFEc, or USPFEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose lint that is of a suitable quality, without further processing, for spinning, papermaking or bleaching, shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under §1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnish a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.
PART 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

§ 1429.101 Applicability.
(a) The regulations in this part are applicable to program applicants who produced both 2003- and 2007-crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.
(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed $15 million, allocated as $7.5 million for fresh asparagus and $7.5 million for processed asparagus, less any reserve allocated for disputed claims.

§ 1429.102 Administration.
(a) The Asparagus Revenue Market Loss Assistance Payment Program will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Administration (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.
(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:
(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and
(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.
(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.
(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

§ 1429.103 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.

Application means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.
Application period means the 60-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.
Asparagus producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in §1400.3 of this chapter, who is an owner, operator, landlord, tenant,
§ 1429.104 Application requirements.

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from http://www.sc.egov.usda.gov.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial market in commercial quantities as determined for this purpose by
the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus production or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

§ 1429.105 Producer eligibility requirements.

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in §1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than $2.5 million for the 3 tax years of 2003 through 2005; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant’s claimed share shown on the application will not be paid.

§ 1429.106 Proof of production.

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or a designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.
(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

§ 1429.107 Maximum and final payment rates.

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

1. $1.06 per pound ($106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and
2. $1.08 per pound ($108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed exceeds the available funding, payments to producers are subject to a $100,000 cap per each of the two program marketing categories (fresh and processed) per asparagus producer as defined in this part, not per “person” or “legal entity” as those terms might be defined in part 1400 of this title.

§ 1429.109 Availability of funds.

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be $15,000,000 as provided by section 10404 of Public Law 110–246.

(b) Of the available funds, $7,500,000 are allocated for fresh market asparagus production and $7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed $15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

§ 1429.111 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC 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, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds.

Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1429.112 Death, incompetence, or disappearance.

(a) In the case of death, incompetence, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer’s estate signs the application for payment. Proof of authority to sign for the deceased producer’s estate or a dissolved entity must be provided. If an asparagus 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.

§ 1429.113 Maintaining records.

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

§ 1429.114 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an ALAP Program application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1429.115 Miscellaneous provisions and appeals.

(a) Offset. CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) Claims. Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) Other interests. Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the
Commodity Credit Corporation, USDA

asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) Assignments. Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) Appeals. Appeals will be handled as specified in parts 11 and 780 of this title.

PART 1430—DAIRY PRODUCTS

Subpart A—Dairy Product Price Support Program

Sec.
1430.100 Applicability.
1430.101 Definitions.
1430.102 Eligible products.
1430.103 Purchase prices.
1430.104 Sales from inventories.

Subpart B—Milk Income Loss Contract Program

1430.200 Applicability.
1430.201 Administration.
1430.202 Definitions.
1430.203 Eligibility.
1430.204 Requesting benefits.
1430.205 Selection of starting month.
1430.206 [Reserved]
1430.207 Dairy operation payment quantity.
1430.208 Payment rate and dairy operation payment.
1430.209 Proof of market loss production.
1430.210 MILC agents.
1430.211 Duration of contracts.
1430.212 Contract modifications and statutory changes in program.
1430.213 Reconstitutions.
1430.214 Violations.
1430.215 [Reserved]
1430.216 Contracts not in conformity with regulations.
1430.217 Offsets and withholdings.
1430.218 Assignments.
1430.219 Appeals.
1430.220 Misrepresentation and scheme or device.
1430.221 Estates, trusts, and minors.
1430.222 Death, incompetency, or disappearance.
1430.223 Maintenance and inspection of records.
1430.224 Refunds; joint and several liability.
1430.225 Violations of highly erodible land and wetland conservation provisions.
1430.226 Violations regarding controlled substances.

Subpart C—2004 Dairy Disaster Assistance Payment Program

1430.300 Applicability.
1430.301 Administration.
1430.302 Definitions.
1430.303 Time and method of application.
1430.304 Eligibility.
1430.305 Proof of production.
1430.306 Determination of losses incurred.
1430.307 Rate of payment and limitations on funding.
1430.308 Availability of funds.
1430.309 Appeals.
1430.310 Misrepresentation and scheme or device.
1430.311 Death, incompetency, or disappearance.
1430.312 Maintaining records.
1430.313 Refunds; joint and several liability.
1430.314 Miscellaneous provisions.
1430.315 Termination of program.

Subpart D—Dairy Market Loss Assistance Program

1430.500 Applicability.
1430.501 Administration.
1430.502 Definitions.
1430.503 Time and method for application.
1430.504 Eligibility.
1430.505 Proof of production.
1430.506 Payment rate and dairy operation payment.
1430.507 Misrepresentation and scheme or device.
1430.508 Maintaining records.
1430.509 Refunds; joint and several liability.
1430.510 New producers.
1430.511 Supplemental payments.

Subpart E—2005 Dairy Disaster Assistance Payment Program (DDAP-II)

1430.600 Applicability.
1430.601 Administration.
1430.602 Definitions.
1430.603 Time and method of application.
1430.604 Eligibility.
1430.605 Proof of production.
1430.606 Determination of losses incurred.
1430.607 Rate of payment and limitations on funding.
1430.608 Availability of funds.
1430.609 Appeals.
1430.610 Misrepresentation and scheme or device.
1430.611 Death, incompetency, or disappearance.
1430.612 Maintaining records.
1430.613 Refunds; joint and several liability.
1430.614 Miscellaneous provisions.

§ 1430.100  
Subpart A—Dairy Product Price Support Program

Source: 75 FR 41367, July 16, 2010, unless otherwise noted.

§ 1430.100  Applicability.
During the period beginning on January 1, 2008, and ending December 31, 2012, the Secretary of Agriculture will support the price of cheddar cheese, butter, and nonfat dry milk by providing a standing offer to purchase those products from eligible offerors. The products must be made from cow’s milk produced in the United States. Purchases are subject to the terms and conditions in CCC’s purchase announcements.

§ 1430.101  Definitions.
For purposes of this subpart, the following definitions apply:

CCC means the Commodity Credit Corporation, USDA.

Eligible offeror means the person, firm, corporation, or other legal entity obligated by the purchase agreement with CCC. The product must not have been sold before to another party and the offeror must be the manufacturer of the dairy product offered or a marketing cooperative for the manufacturer.

Net removals means, for a given period of time, the total dairy product purchased by CCC through the program in this subpart plus the quantity of the product exported through the Dairy Export Incentive Program (as authorized in 15 U.S.C. 713a–14), less the quantity sold by CCC for unrestricted use.

§ 1430.102  Eligible products.
(a) To be eligible for the program in this subpart, the products must be manufactured from dairy cow’s milk produced in the United States, and must not have been previously owned by CCC. Dairy cow in this instance means an animal of the kind that produces the majority of dairy products in the United States and not, for example, cows of other species of animals such as yaks or oxen.

(b) Products will be purchased only from eligible offerors of the product, and only in carlot weights.

(c) The products purchased must be of the following grades and moisture content, as evidenced by USDA-issued inspection certificates:

(1) Block cheddar cheese must be U.S. Grade A or higher, and the moisture content must not exceed 38.5 percent;
(2) Barrel cheddar cheese must be U.S. Extra Grade, and the moisture content must not exceed 36.5 percent;
(3) Butter must be U.S. Grade A or higher;
(4) Nonfat dry milk must be U.S. Extra Grade, and the moisture content must not exceed 3.5 percent.

(d) CCC may require other terms and conditions of purchase, as specified in CCC’s purchase announcement.

§ 1430.103  Purchase prices.
(a) CCC will offer to purchase products at the following prices for all regions of the United States:

(1) Cheddar cheese in blocks for not less than $1.13 per pound; unless

(i) Net removals of cheese for a period of 12 consecutive months exceed 200,000,000 pounds, but do not exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than $1.03 per pound, during the immediately following month, or

(ii) Net removals of cheese for a period of 12 consecutive months exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than $0.93 per pound during the immediately following month;

(2) Cheddar cheese in barrels for $0.03 per pound less than the cheddar cheese block price;

(3) Butter for not less than $1.05 per pound; unless

(i) Net removals of butter for a period of 12 consecutive months exceed 450,000,000 pounds, but do not exceed 650,000,000 pounds, in which case the CCC butter purchase price will be not less than $0.95 per pound during the immediately following month, or

(ii) Net removals of butter for a period of 12 consecutive months exceed 650,000,000 pounds, in which case the CCC butter purchase price will be not less than $0.85 per pound during the immediately following month; and

(4) Nonfat dry milk for not less than $0.80 per pound, unless
(i) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 600,000,000 pounds, but do not exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than $0.75 per pound during the immediately following month, or,

(ii) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than $0.70 per pound during the immediately following month.

(b) CCC may offer to purchase cheddar cheese, butter, fortified nonfat dry milk, or fortified instant nonfat dry milk in consumer-sized ready-to-consume packages at a premium to the purchase prices for cheddar cheese, butter and nonfat dry milk specified in paragraph (a) of this section. Any such offers will be made through CCC’s purchase announcements, and such offers may be limited by quantity and to a specific time period.

(c) CCC may offer to purchase cheddar cheese with a lower moisture content than is specified in §1430.102(c) at a premium to the prices specified in paragraph (a) of this section. Any such offers will be made through CCC’s purchase announcements, and such offers may be limited by quantity and to a specific time period.

§ 1430.104 Sales from inventories.

(a) CCC may sell any dairy product purchased as specified in this subpart for unrestricted use at the market price prevailing for that product at the time of sale, except that the sale price will not be less than 110 percent of the purchase price specified in §1430.103(a), before any price reduction for the amount of CCC net removals of the dairy products.

(b) CCC may sell or distribute dairy products purchased under this section for restricted use when such sale is determined to maximize the return to CCC on its purchases.

Subpart B—Milk Income Loss Contract Program

§ 1430.202 Definitions.

(a) This subpart governs the Milk Income Loss Contract Program. This program provides financial assistance to dairy operations in connection with milk production that is sold in the commercial market.

§ 1430.201 Administration.

(a) This program is administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out by Farm Service Agency (FSA) State and county committees and employees.

(b) State and county committees and their employees may not waive or modify any requirement of this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any action required when not taken by the county committee, require correction of actions not in compliance, or require the withholding of any action that is not in compliance with this subpart.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify program requirements where failure to meet such requirements does not adversely affect the operation of the Milk Income Loss Contract Program.

(f) A representative of CCC may execute Milk Income Loss Contracts and related documents under the terms and conditions determined and announced by CCC. Any document not under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

The definitions in this section shall be applicable for all purposes of administering the Milk Income Loss Contract (MILC) program established by this subpart.

CCC means the Commodity Credit Corporation of the Department.

Class I Milk means milk, including milk components, classified as Class I milk under a Federal milk marketing order.
Contract application means a Milk Income Loss Contract as executed on a form prescribed by CCC.

Contract application period means the date established by the Deputy Administrator for producers to apply for program benefits.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs to farms located in a specific area in a state.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows, and whose production facilities are located in the United States. In administering this program, for purposes of determining what is a “dairy operation” and its eligibility under this program, those determinations will be made in the same manner as was done for the Dairy Market Loss Assistance (DMLA) contracts in the State in which the dairy is located. New MILC operations, which is to say those operations that did not participate in the MILC program for marketings prior to FY 2008, must be unaffiliated with any other DMLA or MILC operations.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA or a designee.

Eligible production means milk that was produced at a time relevant to this program by cows in the United States and marketed commercially by a producer in a participating State.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Federal Milk Marketing Order means an order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

Fiscal Year or FY means the year beginning October 1 and ending the following September 30. Fiscal years will be designated for this part by year by reference to the calendar year in which it ends. For example, FY 2009 is from October 1, 2008, through September 30, 2009 (inclusive).

Hundredweight or cwt. means 100 pounds.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

MILC means the Milk Income Loss Contract program or the form upon which CCC and the producer agree to the terms of the payment to be made under the MILC program.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Participating State means each of the 50 States in the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Payment pounds means the pounds of milk production for which an operation is eligible to be paid under this subpart.

Producer 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 of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of this operation.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Verifiable production records means evidence that is used to substantiate the amount of production marketed and that can be verified by CCC through an independent source.

§ 1430.203 Eligibility.

To be eligible to receive payments under this subpart, a dairy operation must:

(a) Have produced milk in the United States and commercially marketed the milk produced anytime during the period of October 1, 2007, through September 30, 2012;

(b) Enter into a MILC during the contract application period;

(c) Agree to all terms and conditions in the MILC and those that are otherwise contained in this subpart and comply with instructions issued by CCC;

(d) Provide proof of monthly milk production commercially marketed by all persons in the dairy operation during the contract period, to determine the total pounds of milk that will be converted to hundredweight (cwt.) used for payment;

(e) Submit timely production evidence according to §1430.209;

(f) Be actively engaged in the business of producing and marketing agricultural products anytime during the period of October 1, 2007, through September 30, 2012;

(g) Meet all adjusted gross income eligibility requirements of part 1400 of this chapter as regards any person or entity seeking to receive payment under this part. No person or entity may, generally, receive any payment for FY 2009 marketings and subsequent marketings if their nonfarm yearly income for the relevant base period for the relevant marketings as determined under the adjusted gross income rules (as in effect when the payment is sought) is over $500,000 as determined under this subpart. Further, for entities an otherwise due payment will be reduced commensurately to the extent that any person with an interest in the entity, as determined under the adjusted gross income rules had such income over that limit for the relevant period;

(h) Have submitted a contract during the applicable contract period for FYs 2008 through 2012:

(1) Except for 2009, and subject to the start month provision of §1430.205, must have for any fiscal year or month for which payment is sought to be paid submitted the FY 2008 through 2012 contract before the end of that fiscal year or month or

(2) For FY 2008 payments, if payments are generated under this part for that fiscal year, must have submitted a contract for the FY 2008 through 2012 program by October 1, 2009 and for FY 2009 the contract must have been submitted by the month for which payment is first sought except to the extent that §1430.205 explicitly permits the operation to pick a start month in advance of the month in which the contract is submitted; and

(i) Must not, if it did not participate in the preceding MILC program for fiscal years prior to FY 2008, be affiliated with any other dairy operation.


§ 1430.204 Requesting benefits.

(a) A request for benefits or contract application, under this subpart must be submitted on a form as prescribed by the Agency. Contract applications shall be submitted to the FSA office serving the county where the dairy operation is located. Contract applications must be received by FSA by the close of business on the date established by the Deputy Administrator. Contract applications received after such date shall be disapproved.

(b) The dairy operation requesting MILC benefits must certify the accuracy and truthfulness of the information in their contract application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department to verify any information provided will result in disapproval.

(c) Contract applications will be approved by execution by FSA and producer of a MILC. All persons who share in the risk of a dairy operation’s total production must sign and certify the contract application.

§ 1430.205 Selection of starting month.

(a) A dairy operation that enters into a MILC contract with CCC must designate the starting month for each fiscal year for the calculation of payments and pound limits for the operation. Once a start month is chosen for a fiscal year the corresponding month
§ 1430.206

will be the start month for each subsequent fiscal year unless changed by an affirmative request in writing on a form approved by CCC. The production start month must be selected on or before the 14th of the month before the month for which payment is sought. If such date falls on a weekend, the start month selection must be made on the last business day preceding the weekend. A dairy operation cannot select as the start month for payment a month which:

(1) Has already begun, except as provided in paragraph (c)(1) of this section;
(2) Has already passed; or
(3) During which no milk production was produced by the dairy operation.

(b) For FY 2009, if the operation signs its FY 2008 through 2012 MILC contract within 30 days of the beginning of the application period it can pick any preceding FY 2009 month as its start month for that period or can use the normal rule of paragraph (c) of this section to pick the start month.

(c) Except as provided in paragraph (b) of this section, the start month for a fiscal year may only be

(1) For the fiscal year in which the contract is submitted, the month the contract is submitted or
(2) For a fiscal year that has not yet begun, any month, provided that a month may not be selected after the 14th of the preceding month.

(d) Dairy operations may change the production start month on or before the 14th day of the month previously selected.

(e) If a change of the production starting month is not made by the dates required by paragraph (d) of this section, the MILC production starting month cannot be changed until the next fiscal year. If the selected MILC production starting month is never modified, it will remain the same throughout the duration of the contract.

(f) MILC payments will be made consecutively to the dairy operation on a monthly basis after the production starting month has been designated until the earlier of the following:

(1) Payment quantity is reached in accordance with §1430.207; or
(2) The end of the applicable fiscal year.

(g)(1) MILC production start month selections made during the signup period designated by CCC may be made as provided in paragraph (b) of this section, otherwise MILC production start month selections must be made in accordance with paragraph (c) of this section. If a payment rate is not in effect during the production start month selected by the dairy operation, payments to the dairy operation will be issued based on the next consecutive month with a payment rate in effect following the MILC production start month selected by the dairy operation. Production in months in which the pay formula does not produce a payment will not count against the fiscal year’s poundage limit for the operation.

(2) Dairy operations with MILC production start months that begin with the month a MILC contract is submitted to FSA or that begin with the first month of the fiscal year with an effective payment rate will receive payments made by CCC consecutively on a monthly basis, if otherwise provided for in this part, until the earlier of the following:

(i) The maximum payment quantity for the fiscal year or month is reached as determined in accordance with §1430.207 or

(ii) The end of the applicable fiscal year.

(h) All producers involved in the dairy operation must agree to the month designated. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity.

[71 FR 19622, Apr. 17, 2006, as amended at 73 FR 73766, Dec. 4, 2008]

§ 1430.206 [Reserved]

§ 1430.207 Dairy operation payment quantity.

(a) The applicant’s payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation per fiscal year.
Commodity Credit Corporation, USDA § 1430.208

(b) The maximum quantity of eligible production for which dairy operations, per separate and distinct operation, are eligible for payment per fiscal year under this subpart will be:

(1) 2,400,000 pounds (24,000 cwt.) for FY 2008 (October 1, 2007, through September 30, 2008);
(2) 2,985,000 pounds (29,850 cwt.) for FY 2009 (October 1, 2008 through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011) and FY 2012 (October 1, 2011, through September 30, 2012), provided further an operation may receive payment for September 2012 marketings only if its pre-September FY 2012 marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation’s FY 2012 marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.

(c) In accordance with these regulations, the Deputy Administrator will determine what is a separate and distinct operation. That decision will be final.


§ 1430.208 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations when the Boston Class I milk price under the applicable Federal milk marketing order is below $16.94 per cwt. No payments will be made to dairy operations for marketings during the months that the Boston Class I milk price under the applicable milk marketing order is equal to or exceeds $16.94. Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from $16.94 the Class I milk price per cwt. in Boston;
(2) Multiplying the difference by 34 percent for marketings during the period beginning on October 1, 2007, and ending on September 30, 2008;
(3) Multiplying the difference by 45 percent for marketings during the period beginning on October 1, 2008, and ending on August 31, 2012; and

(4) Multiplying the difference by 34 percent for marketings in September 2012.

(c) The payment rate as calculated as specified in paragraph (b) of this section, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set in paragraphs (c)(1) and (c)(2) of this section. The National Average Dairy Feed Ration Cost per cwt. for each month will be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound noted on page 33 of the USDA monthly Agricultural Prices publication (including the data and factors noted in footnote 4). The payment rate adjustment for Entire Month feed prices will be determined by increasing $16.94 by the percentage that is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds $7.35 per cwt. (except that $7.35 will be $9.50 for September 2012 marketings.)

(d) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight and
(2) Multiplying the payment rate determined in paragraphs (b) and (c) of this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to §1430.205 and other provisions of this subpart.

(3) Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(e) Payments under this subpart may be made to a dairy operation only up to the maximum production limitations set in §1430.207(b) of eligible production per applicable fiscal year.

(f) Dairy operations receiving benefits under this subpart, will receive earned payments on a monthly basis according to the MILC contract, to the extent practicable, not later than 60 days after the later of production evidence and all supporting documents for the applicable month are received by CCC or the entire month National Average Dairy Feed Ration Cost is made
available by USDA, as applicable. Payments issued by CCC more than 60 days after the later of all production evidence and supporting documentation are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, whichever is later, will be subject to prompt payment interest as allowed by law. However, CCC will endeavor where possible to make payments within 60 days of the end of the marketing month.

§ 1430.209 Proof of market loss production.

(a) A dairy operation entering into a MILC must, based on instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation’s eligible production during the months of each fiscal year designated in the MILC. The dairy operation must also provide proof that the eligible production was commercially marketed during the months beginning October 1, 2007, and ending September 30, 2012. Evidence of milk production claimed for payment shall be provided to CCC with supporting documentation under paragraph (b) of this section. All information provided is subject to verification, spot check and audit by FSA. Further verification information may be obtained from the dairy operation’s milk handler or marketing cooperative if deemed necessary by CCC to verify provided information. Refusal to allow a representative of CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility for benefits under this subpart.

(b) Eligible dairy operations marketing milk during the period specified in the MILC shall provide any available supporting documents from all producers in the dairy operation to assist CCC in verifying that the dairy operation produced and marketed milk commercially from the designated starting month and thereafter. Examples of supporting documentation include, but are not limited to: milk marketing payment stubs, tank records, milk handler records, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. Producers may also be required to allow CCC to examine the herd of cattle as production evidence. If supporting documentation requested is not presented to CCC or FSA, the request for MILC benefits will be disapproved.

§ 1430.210 MILC agents.

(a) MILC benefits may be disbursed by a dairy marketing cooperative that serves special groups or communities, such as an Amish or Mennonite community. Producers in such groups in a dairy operation may authorize an agent of a dairy cooperative or milk handler affiliated with such cooperative to obtain and disburse MILC benefits to the dairy operation.

(b) The authorized MILC agent must on behalf of the dairy operation do the following:

(1) Obtain an acceptable power of attorney or acceptable equivalent for the producers of the dairy operation that authorizes the agent to enter into an MILC contract;
(2) Enter into a written agreement with CCC for approval to act as a MILC agent on a form prescribed by CCC;
(3) Provide the dairy operation’s monthly production evidence to the appropriate FSA office;
(4) Disburse payment to the dairy operation in the producer’s monthly milk check or in an otherwise approved manner.

§ 1430.211 Duration of contracts.

(a) Except as provided in §1430.205, or elsewhere in this subpart, a MILC entered into by producers in a dairy operation shall cover eligible production marketed by the producers in the dairy operation during the period beginning with the first day of the month the producers in the dairy operation enter into an MILC and ending on September 30, 2012.
Commodity Credit Corporation, USDA

§ 1430.212 Contract modifications and statutory changes in program.

(a) Producers in a dairy operation must notify FSA immediately of any changes that may affect their MILC. Changes include, but are not limited to, changes to the starting month to receive payment for the next fiscal year, death of producer on the contract, new member joining the operation, member exiting the operation, transfer of shares by sale or other transfer action, or farm reconstitutions undertaken in accordance with §1430.213.

(b) CCC may modify an MILC if such modifications are desirable to carry out purposes of the program or to facilitate the program's administration.

(c) Payments otherwise due under this subpart or the program will be adjusted or denied to the extent provided for by a statutory change in program eligibilities or requirements of any kind irrespective of whether the program contract preceded the statutory change. Operations will be given the option of accepting the changes or terminating the contract.

§ 1430.213 Reconstitutions.

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of its operation is reconstituted in another organizational framework. However, any operation that reorganizes or restructures after October 1, 2007, is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of receiving multiple or additional MILC payments.

(b) A dairy operation that FSA determines has reorganized solely to receive additional MILC payments will be in violation of its contract and dealt with in accordance with §1430.214.

(c) If during the contract period a change in the dairy operation occurs, the modification to the MILC will not take effect until the first day of the fiscal year following the month FSA received notification of the changes. Changes include but are not limited to any producer affiliated with a dairy operation that has an approved MILC with CCC forming a new dairy operation that is not formed solely to receive additional MILC payments.

(d) Changes resulting in the following will take effect immediately upon notification to CCC, in accordance with §1430.212:

(1) Increases or reductions of shareholders or producers and their corresponding share amounts in the dairy operation; or

(2) Purchases of a new dairy operation by a producer or producers not affiliated with an existing dairy operation that has an approved MILC with CCC.

§ 1430.214 Violations.

(a) If producers in a dairy operation violates the MILC or the requirements of this subpart, CCC may:

(1) Terminate the MILC for the remainder of the fiscal year in which the violation occurs, and allow the producer to retain any payments received under the contract; or

(2) Allow the MILC to remain in effect and require the producer to repay a portion of the payments received commensurate with the violation's severity, as CCC determines.

(3) If the MILC is terminated under this section, the participant shall forfeit all rights to further MILC benefits and shall refund all or part of the payments received as CCC determines appropriate.

(4) A producer or operation with a violation, as determined by CCC, shall refund all MILC funds disbursed under this part. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

(b) A MILC is violated by the following actions:

(1) Failure to comply with the terms and conditions of the MILC and addendum;
(2) Reconstitutions of the dairy operation for the sole purpose of receiving multiple program benefits;  
(3) Failure to comply with highly erodible land conservation and wetland provisions of this 7 CFR part 12 or their successor regulations;  
(4) Failure to meet the definition of a dairy operation according to §1430.202;  
(5) Any action that tends to defeat the purpose of the program, as CCC determines.  

c) The Deputy Administrator for Farm Programs (DAFP) of the Farm Service Agency may terminate any MILC by mutual agreement upon request of the participant if DAFP determines that termination is in the best interest of the public.  
d) The DAFP may determine that failure of the dairy operation to perform the MILC does not warrant termination and may require the participant to refund part of the payments received or accept adjustments in the payment as the DAFP determines to be appropriate.

§ 1430.215 [Reserved]

§ 1430.216 Contracts not in conformity with regulations.

If it is discovered that an MILC contract does not comply with this subpart as the result of a misunderstanding by someone who has signed the contract, the contract may be modified by mutual agreement. If the parties to the MILC cannot reach agreement on such modification, it shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed under §1430.214.

§ 1430.217 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart under the provisions of part 1403 of this chapter or any successor regulations.

§ 1430.218 Assignments.

Any producer may assign a payment to be made under this part in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

§ 1430.219 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under part 11 or 780 of this title.

§ 1430.220 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible for the MILC program if PSA determines that it knowingly:  
(1) Adopted a scheme or device that tends to defeat the purpose of this program;  
(2) Made any fraudulent representation; or  
(3) Misrepresented any fact affecting a determination under this program. CCC will take steps deemed necessary to protect the interests of the government.  
(b) Any funds disbursed to a producer or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1430.221 Estates, trusts, and minors.

(a) Program documents executed by producers legally authorized to represent estates or trusts will be accepted only if such producers furnish 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 that 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.

§ 1430.222 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits under this part, such persons as are specified in part 707 of this title may
Commodity Credit Corporation, USDA

receive such benefits, as determined appropriate by FSA.

§ 1430.223 Maintenance and inspection of records.

(a) Producers approved for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC or FSA. Such records and accounts must be retained for 3 years after the date of payment to the dairy operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the Department, or the Comptroller General of the United States shall have access to the premises of the dairy operation in order to inspect the herd of cattle, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any producers or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1430.224 Refunds; joint and several liability.

(a) In the event of an error on a MILC application, a failure to comply with any term, requirement, or condition for payment arising under the MILC application, or this subpart, all improper payments shall be refunded to CCC together with interest from the date payment was received through the date the refund is received by CCC.

(b) All producers signing a dairy 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 contract application and addendum or this part for such operation.

§ 1430.225 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1430.226 Violations regarding controlled substances.

The provisions of § 718.11 of this title apply to this part.

Subpart C—2004 Dairy Disaster Assistance Payment Program

SOURCE: 70 FR 56115, Sept. 26, 2005, unless otherwise noted.

§ 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2004 Dairy Disaster Assistance Payment Program authorized by section 103 of Division B of Public Law 108–324. Benefits are available to eligible United States producers who have suffered dairy production losses and dairy spoilage losses in eligible counties as a result of a hurricane disaster in 2004.

(b) To be eligible for this program, a producer must have been a milk producer in 2004 in a county declared a disaster by the President of the United States due to a 2004 hurricane. Only losses occurring in those counties are eligible for payment in this program. Producers in contiguous counties that were not designated by the President as a disaster county due to a hurricane in 2004 are not eligible.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.
§ 1430.301 Administration.

(a) The 2004 Dairy Disaster Assistance Payment Program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

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

(d) No provision of delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2004 Dairy Disaster Assistance Payment Program and does not violate statutory limitations on the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in the 2004 Dairy Disaster Assistance Payment Program is voluntary, program benefits are not to be provided unless the participant furnishes all requested data.

§ 1430.302 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 2004 Dairy Disaster Assistance Payment Program established by this subpart.

Application means the 2004 Dairy Disaster Assistance Payment Program Application.

Application period means the time period established by the Deputy Administrator for producers to apply for program benefits.

CCC means the Commodity Credit Corporation of the Department.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a state.

Dairy operation means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

Disaster county means a county declared a disaster by the President of the United States due to a hurricane in 2004, and is only the county so declared, not a contiguous county.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Hundredweight or cwt. means 100 pounds.

Milk handler or cooperative means the marketing agency to, or through which, the producer commercially markets whole milk.

Milk marketings means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use. In counting milk toward production amounts, dumped milk will not be considered as marketed for commercial use. Such dumped milk shall be counted toward production but will be accounted for separately from milk that is marketed for normal commercial use as determined by the Deputy Administrator. All production in the months for which loss coverage is available will be counted in making determinations under...
this part, as determined by the Deputy Administrator, with care to avoid double counting, and with care to avoid a calculated loss that overstates the actual losses.

Payment pounds means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.

Producer 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 of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity of the proceeds of this operation.

Starting base production means actual commercial production marketed by the dairy operation during the month of July 2004, or alternative period established by the Deputy Administrator.

Verifiable production records means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by CCC through an independent source.

§ 1430.303 Time and method of application.

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at http://www.sc.egov.usda.gov.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in §1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. The closing date shall be no sooner than October 11, 2005. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation’s total production must certify to the information on the Application before the Application is considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines and other penalties or sanctions.

§ 1430.304 Eligibility.

(a) Producers in the United States are eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in counties declared a disaster by the President due to any hurricane in 2004. To be eligible to receive payments under this subpart, producers in a dairy operation must:

1. Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2004 calendar year;

2. Be a producer on a dairy farm operation physically located in a disaster county where production and milk spoilage losses were incurred as a result of 2004 hurricanes, and limiting their claims to losses occurring in those counties;

3. Provide proof of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the third quarter of the 2004 milk marketing year, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and
§ 1430.305  Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that production and spoilage losses can be computed in accordance with §1430.306.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production and dairy cow purchases, for each month of the period July 2004 through October 2004, and must specifically identify any dumped production for August through October 2004. If a month other than July 2004 is used for base creation purposes records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by FSA as necessary to verify production or spoilage losses and dairy herd increases or decreases to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm the production history and losses incurred by the dairy operation.

(d) Adequate proof of dairy cow additions to the milking herd during the eligible months can include, but are not limited to sales receipts, invoices, State health certificates, or any other documents available to confirm the cow purchases.

(e) All information provided to FSA by a producer is subject to verification, spot-check and audit by FSA. Also, FSA or another CCC representative may examine the dairy operation’s production or spoilage claims.

(f) If adequate proof of commercially-marketed production and supporting documentation is not presented to the satisfaction of CCC or FSA, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the month of July 2004, but which suffered eligible losses, an alternate base period may be established by the Deputy Administrator.

§ 1430.306  Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to
Commodity Credit Corporation, USDA § 1430.306

those occurring in August through October 2004. Specifically, dairy production and spoilage losses incurred by producers under this subpart are determined on the established history of the dairy operation’s actual commercial production marketed from August through October 2004, and actual production dumped or otherwise not marketed from August through October 2004, as provided by the dairy operation consistent with §1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in §1430.302, is adjusted downward by a percentage determined by CCC to determine the base production for the months of August through October 2004. These adjustments are made to account for the seasonal declines that can occur during those months. The base production for each of the months August through October 2004 is calculated by reducing the starting base production (July 2004, or alternate month approved by the Deputy Administrator for new producers) as follows:

(1) August 2004 base production is the starting base production reduced by 9 percent;
(2) September 2004 base production is the starting base production reduced by 15 percent;
(3) October 2004 base production is the starting base production reduced by 11 percent.

(b) The eligible dairy production losses for a dairy operation for each of the months of August through October 2004 will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less,
(2) For each such month for each dairy operation, the total of:
   (i) Actual commercially-marketed production (not counting dumped production counted under paragraph (b)(1)(ii) of this section); plus
   (ii) The pounds of milk production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible, they must, as with other program losses, be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by FSA not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will mean that the dairy operation incurred no eligible production losses for the corresponding month as a result of the hurricane disaster, and that the production level for that month does not qualify for a payment under this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through October 2004 will be determined based on actual milk produced in those months that was dumped on the farm as a result of the 2004 hurricanes. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in §1430.305.

(e) Calculated production losses may be adjusted by FSA based on the monthly average of daily dairy cow additions or reductions to the milking herd during the period of July 1, 2004 through October 31, 2004, to account for production adjustments as a result of dairy cow purchases, sales, or death losses. Production adjustments can be calculated using the average number of dairy cows in a dairy operation’s milking herd and the average production per cow during each applicable month. Per-cow production averages during the months of August through October will be determined based on the actual per-cow production average during the month of July 2004 and reduced downward according to the seasonal decline percentages provided in paragraph (a) of this section, to determine the total production that may be credited back to the dairy operation’s total production losses. To qualify for the production adjustment:

(1) Producers in eligible dairy operations must report any increases or decreases to the dairy cow milking herd during the period of July 1, 2004 through October 31, 2004.
(2) Adequate supporting documentation according to §1430.305 must be provided to the satisfaction of the COC to
verify any claims of herd increases or decreases during the eligible period.

(3) Any cows purchased during the eligible period that would increase the dairy cow milking herd must have been to offset production losses as a result of the 2004 hurricanes.

(f) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (e) of this section are added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(g) Payment on eligible dairy operation losses is calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation’s eligible production loss among the producers of the dairy operation according to §1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(h) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

§ 1430.307 Rate of payment and limitations on funding.

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to §1430.306 is, depending on the State, the average monthly Mailbox milk price for the Florida, the Southeast, or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service during the months of August, September, and October of 2004. Maximum payment rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—$17.62 per hundredweight ($0.1762 per pound).

(2) Alabama, Georgia, Louisiana, and Mississippi—$16.26 per hundredweight ($0.1626 per pound).

(3) North Carolina and South Carolina—$15.59 per hundredweight ($0.1559 per pound).

(b) Subject to the availability of funds, each eligible dairy operation’s payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation’s total eligible losses. Where there are multiple producers in the dairy operation, individual producers’ payments are disbursed according to each producer’s share of the dairy operation’s production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the $10 million available for the 2004 Dairy Disaster Assistance Payment Program, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full three month period, August–October 2004 (not a monthly average for any one month), are greater than 20 percent of the total base production for those three months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months does not itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under §1430.306, of less than or equal to 20 percent during the eligibility period of August to October 2004 will be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20 percent threshold.
(d) In no event shall the payment exceed the value determined by multiplying the producer’s total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle claims that extend beyond the conclusion of the application period, but claims shall not be payable once the available funding is expended.

§ 1430.308 Availability of funds.

The total available program funds shall be $10 million as provided by section 103 of Division B of Public Law 108–324.

§ 1430.309 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§1430.307 and 1430.308.

§ 1430.310 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by FSA or CCC 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 dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable 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 subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1430.311 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

§ 1430.312 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

§ 1430.313 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation’s application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) Interest shall be applicable to any refunds required in accordance with 7 CFR parts 792 and 1403. Such interest shall be charged at the rate the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous determination was not
due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of FSA alone.

§ 1430.314 Miscellaneous provisions.
(a) Offset. CCC may offset or withhold any amount due CCC under this subpart in accordance with 7 CFR part 1403.
(b) Claims. Claims or debts are settled in accordance with 7 CFR part 1403.
(c) Other interests. Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.
(d) Assignments. Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

§ 1430.315 Termination of program.
This program ends after payment has been made to those applicants certified as eligible pursuant to the application period established in §1430.304. All eligibility determinations shall be final except as otherwise determined by the Deputy Administrator.

Subpart D—Dairy Market Loss Assistance Program

SOURCE: 64 FR 24934, May 10, 1999, unless otherwise noted.

§ 1430.500 Applicability.
This subpart establishes the Dairy Market Loss Assistance Program. The purpose of this program is to provide benefits to dairy operations under Public Law 105–277, 112 Stat. 2681; sections 805 and 825 of Public Law 106–78; and section 805 of Public Law 106–387 only, in order to provide financial assistance to dairy operations in connection with normal milk production that is sold on the commercial market.

§ 1430.501 Administration.
(a) The provisions of §§1430.351, 1430.352, 1430.354, 1430.355, and 1430.360 shall be applied to this subpart in the same manner as they are applied to the subpart in which they are located.
(b) The provisions of §§1430.1 through 1430.349, 1430.353, 1430.356 through 1430.359, 1430.361 through 1430.362, and 1430.400 through 1430.410 are not applicable to this subpart.
(c) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA committees under the general direction and supervision of the State and county FSA committees.
(d) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this subpart.
(e) The State committee shall take any action required by this subpart which has not been taken by the county committee. The State committee shall also:
(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart; or
(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.
(f) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.
(g) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness
Commodity Credit Corporation, USDA

§ 1430.502 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Dairy Market Loss Assistance Program established by this subpart.

Application means the Dairy Market Loss Assistance Program Payment application, CCC–1040.


Base period means the calendar year, either 1997 or 1998, as selected by the dairy operation, during which milk was produced and marketed.

Commodity Credit Corporation means the Commodity Credit Corporation.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production and facilities are located in the United States.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Eligible production means milk that had been produced by cows in the United States and marketed commercially during the calendar year, subject to a maximum of 26,000 cwt per dairy operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.


Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary’s stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1430.503 Time and method for application.

(a) Dairy operations may obtain an application, Form CCC–1040 (Dairy Market Loss Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC–1040 at http://www.fsa.usda.gov/dafp/pwd/.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC–1040. The Form CCC–1040 should be submitted to the county FSA office serving the county where the dairy operation is located but, in any case, must be received by the county FSA office by the close of business on February 28, 2001. Applications not received by the close of business on February 28, 2001, will be disapproved as not having been timely filed and the dairy operation will not be eligible for benefits under this program.

(c) All persons who share in the milk production of a dairy operation that marketed milk during the fourth quarter of 1998 must certify on the same CCC–1040 in order to obtain the total milk production of the dairy operation before the application is complete.

(d) The dairy operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits.
§ 1430.504 Eligibility.

(a) To be eligible to receive cash payments under this subpart, a dairy operation must:

(1) Have produced and marketed milk commercially in the United States anytime during the fourth quarter of 1998;

(2) Indicate all milk commercially marketed by all persons in the dairy operation during calendar year 1997 and 1998 to establish the base period for determining the total pounds of milk that will be converted to hundred-weight (cwt) used for payment; and

(3) Apply for payments during the application period.

§ 1430.505 Proof of production.

(a) Dairy operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the dairy operation was commercially marketing milk anytime during the fourth quarter of 1998. The dairy operation must also provide proof of production for the 1997 or 1998 calendar year to verify the base period. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1997 or 1998 calendar year milk production must be documented using actual records.

(b) All persons involved in such dairy operation marketing milk during the fourth quarter of 1998 shall provide any available supporting documents to assist the county FSA office in verifying that the dairy operation produced and marketed milk commercially during the fourth quarter of 1998 and the base period milk marketings indicated on Form CCC-1040. Examples of supporting documentation include, but are not limited to: tank records, milk handler records, milk marketing payment stubs, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, dairy operations will be determined ineligible for benefits.

§ 1430.506 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations only on the first 26,000 cwt of milk produced by them from cows in the United States actually marketed in the United States during the base period. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Converting whole pounds of milk to cwt;

(2) Totaling the eligible cwt (not to exceed 26,000 cwt) of milk marketed commercially during the base period from all approved applications; and

(3) Dividing the amount available for Dairy Market Loss Assistance Program by the total eligible cwt submitted and approved for payment.

(b) Each dairy operation payment will be calculated by multiplying the payment rate determined in paragraph (a) (3) of this section by the dairy operation’s eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in
its sole discretion, finds fair and reasonable.

§ 1430.507 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a dairy operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the dairy operation’s actions, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of the dairy operation if CCC determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the dairy operation.

(d) Interest determined in accordance with paragraph (c) of this section may be waived by CCC with respect to refunds required of the dairy operation because of unintentional misaction on the part of the dairy operation, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 1403.

(f) Dairy operations must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 1430.510 New producers.

Notwithstanding other provisions of this subpart, producers who were new producers in 1999 or 2000 and not affiliated with other eligible producers may receive payments from sums made
§ 1430.511 Supplemental payments.

(a) Supplemental payments under Public Law 106–387 will be made available to dairy operations in connection with normal milk production that is sold on the commercial market.

(b) For supplemental payments made under this section, the payment rate shall be $0.6468 per cwt.

(c) For dairy operations that received a payment under sections 805 and 825 of Public Law 106–78 on less than 12 months production, an annual production level will be calculated by subtracting from the dairy operation's production level for the period of October 1, 1999 through September 30, 2000 the production level on which previous payments were received.

§ 1430.600 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to DDAP–II authorized by section 3014 of Public Law 109–234. Benefits are available to eligible United States producers who have suffered in 2005 dairy production losses and dairy spoilage losses in eligible counties as a result of Hurricanes Katrina, Ophelia, Rita, and Wilma or conditions related to those hurricanes.

(b) To be eligible for this program, a producer must have been a milk producer in 2005 in a county declared a natural disaster by the Secretary of Agriculture or declared a major disaster or emergency designated by the President of the United States due to a 2005 hurricane or related condition thereof, or in a contiguous county to a county that is directly eligible by way of a natural disaster declaration. Only losses occurring in these counties are eligible for payment under this program.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.

§ 1430.601 Administration.

(a) DDAP–II shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

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

(d) No provision of delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or
modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2005 Dairy Disaster Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP-II is voluntary, program benefits are not provided unless the participant furnishes all requested data.

§ 1430.602 Definitions.

The definitions in 7 CFR part 718 shall apply to this subpart except to the extent they are inconsistent with the provisions of this subpart. In addition, for the purpose of this subpart, the following definitions shall apply.

**Application** means DDAP–II Application.

**Application period** means the time period established by the Deputy Administrator for producers to apply for program benefits.

**Base month** means the base month for the particular 2005 hurricane assigned in §1430.604.

**CCC** means the Commodity Credit Corporation of the Department.

**Claim period** means as assigned in this subpart the qualifying months of calendar year 2005, following the base month, in which the loss occurred.

**County committee** means the FSA county committee.

**County office** means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

**Dairy operation** means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

**Department or USDA** means the United States Department of Agriculture.

**Deputy Administrator** means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

**Farm Service Agency or FSA** means the Farm Service Agency of the Department.

**Hundredweight or cwt.** means 100 pounds.

**Hurricane-affected county** means a county included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma or conditions related to those hurricanes, and includes counties which qualify because they are contiguous to a county that qualifies by a natural disaster declaration.

**Milk handler or cooperative** means the marketing agency to, or through which, the producer commercially markets whole milk.

**Milk marketings** means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use. In counting milk toward production amounts, dumped milk will not be considered as marketed for commercial use. Such dumped milk shall be counted toward production but will be accounted for separately from milk that is marketed for normal commercial use as determined by the Deputy Administrator. All production in the months for which loss coverage is available will be counted in making determinations under this part, as determined by the Deputy Administrator, with care to avoid double counting, and with care to avoid a calculated loss that overstates the actual losses. Adjustments may be made as appropriate to accomplish these objectives.

**Natural disaster declaration** means a natural disaster declaration issued by the Secretary of Agriculture during calendar year 2005 under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 (a)), or a major disaster or emergency designation by the President of the United States during calendar year 2005 under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, including declarations and designations by both the President and Secretary made during calendar year 2006 for which a request was pending as of December 31, 2005.

**Payment pounds** means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.
§ 1430.603 Time and method of application.

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at http://www.sc.egov.usda.gov.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in §1430.602. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. The closing date shall be no sooner than November 30, 2006. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation’s total production must certify to the information on the Application before the Application is considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved.

§ 1430.604 Eligibility.

(a) Producers in the United States are eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in 2005 as a result of a hurricane disaster or related condition, in a hurricane-affected county. To be eligible to receive payments under this subpart, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2005 calendar year;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production and milk spoilage losses were incurred as a result of 2005 hurricanes, or a related condition, in and limiting their claims to losses occurring in those counties and contiguous counties;

(3) Provide adequate proof, to the satisfaction of the County Committee, of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the base month and claim period that corresponds with the applicable hurricane-related disaster during the 2005 milk marketing year, or other...
Commodity Credit Corporation, USDA

§ 1430.605  Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production and spoilage losses can be computed in accordance with §1430.606.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production and dairy cow purchases, for each month of the applicable base month and claim period that corresponds with the applicable 2005 hurricane disaster or related condition, and must specifically identify any production during the applicable claim period that is dumped. If a month other than the applicable base month is used for base creation purposes, records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by CCC as necessary to verify production or spoilage losses and dairy herd increases or decreases to the satisfaction of CCC.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm or adjust the production history and losses incurred by the dairy operation.

(d) Adequate proof of dairy cow additions to the milking herd during the eligible months can include, but is not limited to sales receipts, invoices, State health certificates, or any other documents available to confirm the cow purchases.

(e) If adequate proof of normally marketed production, dumped production, and any other production for relevant periods is not presented to the...
satisfaction of CCC, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the applicable base month, but which suffered eligible losses, an alternate base period may be established by the Deputy Administrator.

§ 1430.606 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable claim period, as provided by §1430.604(g), that corresponds with the hurricane-related disaster. Specifically, dairy production and spoilage losses incurred by producers under this subpart are determined on the established history of the dairy operation’s actual commercial production marketed during the applicable claim period that corresponds with the hurricane-related disaster, and actual production dumped or otherwise not marketed during that same claim period, as provided by the dairy operation consistent with §1430.605. Except as otherwise provided in these regulations, the starting base production, as defined in §1430.602 and established in §1430.604(g), is adjusted downward by a percentage determined by CCC to determine the base production for the applicable claim period that corresponds to the hurricane-related disaster. These adjustments are made to account for the seasonal declines that can occur during the months within the claim period. The base production for each of the applicable claim period months is calculated by reducing the starting base production of the applicable base month, or alternate month approved by the Deputy Administrator for new producers, as follows:

(1) August 2005 base production is the starting base production reduced by 8 percent;
(2) September 2005 base production is the starting base production reduced by 17 percent;
(3) October 2005 base production is the starting base production reduced by 11 percent. However, if losses occurred only as a result of Hurricanes Ophelia and Wilma, for October 2005, base production is not reduced.
(4) November 2005 base production is the starting base production reduced by 6 percent, unless eligible losses occurred only as a result of Hurricanes Ophelia and Wilma, in which case, for November 2005, base production is not reduced.
(5) December 2005 base production is not reduced by a downward adjustment percentage.

(b) The eligible dairy production losses for a dairy operation for each of the claim period months of August through December 2005, as applicable, will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less,
(2) For each such month for each dairy operation, the total of:
   (i) Actual commercially-marketed production (not counting dumped production counted under paragraph (b)(1)(ii) of this section); plus
   (ii) The pounds of milk production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible for payment, however, they must, as with other program losses, be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by CCC not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will mean that the dairy operation incurred no eligible production losses for the corresponding month as a result of the hurricane disaster, and that the production level for that month does not qualify for a production loss payment under this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through December 2005, as applicable to the claim period that corresponds with the hurricane-related disaster, will be determined based on actual milk produced in those months that was...
Commodity Credit Corporation, USDA § 1430.607

dumped on the farm as a result of the 2005 hurricanes, or other related condition. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in §1430.606.

d) Calculated production losses may be adjusted by CCC based on the monthly average of daily dairy cow additions or reductions to the milking herd during the applicable claim period that corresponds with the hurricane-related disaster, to account for production adjustments as a result of dairy cow purchases, sales, or death losses. Production adjustments can be calculated using the average number of dairy cows in a dairy operation's milking herd and the average production per cow during each applicable month. Per-cow production averages during the applicable claim period months will be determined based on the actual per-cow production average during the base month applicable to the hurricane-related disaster and reduced downward according to the seasonal decline percentages provided in paragraph (a) of this section, to determine the total production that may be credited back to the dairy operation's total production losses. To qualify for the production adjustment credit:

(1) Producers in eligible dairy operations must report any increases to the dairy cow milking herd during the applicable base month and claim period that corresponds to the hurricane disaster condition to the eligible hurricane.

(2) Adequate supporting documentation according to §1430.605 must be provided to the satisfaction of the COC to verify any claims of herd increases during the eligible period.

(3) Any cows purchased during the eligible period that would increase the dairy cow milking herd must have been to offset production losses as a result of the 2005 hurricanes, or other related condition.

(g) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (d) of this section are added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(g) Payment on eligible dairy operation losses is calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to §1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(h) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Department of Agriculture (USDA) for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the FSA administrative office from which the payment was received.

EDITORIAL NOTE: At 71 FR 65711, Nov. 9, 2006, §1430.606(g) was amended by revising the reference to “§1420.305” to read “§1430.605”. However, because of inaccurate amendatory language, this amendment could not be incorporated.

§ 1430.607 Rate of payment and limitations on funding.

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to §1430.606 is, depending on the State, the amount set forth below which is derived from the monthly Mailbox milk price for the Florida, the Southeast, Western Texas or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service. Maximum payment...
rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—$18.19 per hundredweight ($0.1819 per pound), which is averaged to account for the mailbox price during the months of August 2005 and October 2005 when the hurricane disasters occurred.

(2) Louisiana—$16.47 per hundredweight ($0.1647 per pound), which is averaged to account for the mailbox price during the months of August 2005 and September 2005 when the hurricane disasters occurred.

(3) Alabama, Arkansas, Georgia and Mississippi—$16.49 per hundredweight ($0.1649 per pound).

(4) North Carolina—$15.39 per hundredweight ($0.1539 per pound).

(5) Texas—$14.19 per hundredweight ($0.1419 per pound).

(6) Tennessee—$15.38 per hundredweight ($0.1538 per pound).

(b) Subject to the availability of funds, each eligible dairy operation’s payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation’s total eligible losses. Where there are multiple producers in the dairy operation, individual producers’ payments are disbursed according to each producer’s share of the dairy operation’s production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the $17 million available for DDAP–II, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full disaster claim period that corresponds with the applicable hurricane-related disaster (not a monthly average for any one month), are greater than 20 percent of the total base production for those applicable claim period months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months does not itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under §1430.606, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer’s total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle pending or disputed claims, but claims shall not be payable once the available funding is expended.

§ 1430.608 Availability of funds.

The total available program funds shall be $17 million as provided by section 3014 of Title III of Public Law 109–234.

§ 1430.609 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§1430.607 and 1430.608 and other limitations as may apply.

§ 1430.610 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by CCC 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, must be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or
person receiving payment under this subpart shall be jointly and severally liable 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 subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1430.611 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by CCC.

§ 1430.612 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party imposed with the recordkeeping requirements by this subpart.

§ 1430.613 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation’s application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) In accord with parts 792 and 1403 of this title, interest shall be applicable to any refunds required under this subpart. Such interest shall be charged at the rate the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1430.614 Miscellaneous provisions.

(a) CCC may offset or withhold any amount due CCC under this subpart in accordance with 7 CFR part 1403.

(b) Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock or property of any kind, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(c) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

PART 1434—NONRECESS MARKETING ASSISTANCE LOAN AND LDP REGULATIONS FOR HONEY

Sec. 1434.1 Applicability.
1434.2 Administration.
1434.3 Definitions.
1434.4 Eligible producer.
1434.5 Eligible honey.
1434.6 Beneficial interest.
1434.7 Approved storage.
1434.8 Containers and drums.
1434.9 Determination of quantity.
1434.10 Application, availability, disbursement, and maturity.
1434.11 Fees and interest.
1434.12 Liens.
1434.13 Transfer of producer’s interest prohibited.
1434.14 Loss or damage.
1434.15 Personal liability.
1434.16 Release of the honey pledged as collateral for a loan.
1434.17 Liquidation of loans.
1434.18 Loan repayments.
1434.19 Settlement.
1434.20 Foreclosure.
1434.21 Loan deficiency payments.
1434.22 Death, incompetency, or disappearance; appeals; other loan provisions.
§ 1434.1 Applicability.

(a) This part provides the terms and conditions of Commodity Credit Corporation (CCC) nonrecourse marketing assistance loans or loan deficiency payments for honey for the 2008 through 2012 crop years. Marketing loan gains and loan deficiency payments for the 2008 crop will be limited to the payment limitation rules applicable to the 2008 crop. Beginning with the 2009 crop year, there will not be payment limits on marketing loan gains and loan deficiency payments.

(b) Producers must comply with all provisions of this part and part 1421 of this chapter.

[74 FR 15656, Apr. 7, 2009]

§ 1434.2 Administration.

(a) The regulations of this part shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(b) State and county committees, representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that has not been taken by the county committee. The State committee shall also:

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

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

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

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

(f) An approving official of CCC may execute loans and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void unless affirmed by the Executive Vice President, CCC.

§ 1434.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title shall also be applicable except where those definitions are inconsistent with the definitions set forth in this section or for purpose of program instruments created under this part.

Approving official is a representative of CCC who is authorized by the Executive Vice President, CCC, to approve loan documents prepared under this part.

Charge is a fee, cost, and expense (including foreclosure costs) incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the honey.

CMA is a cooperative marketing association engaged in marketing honey.

County office is the local FSA office.

Crop year is the calendar year in which honey is extracted.

Ineligible honey is honey not eligible for a loan under this part for which ineligibility shall include, but is not limited to, honey from applicable floral sources regardless of whether the honey meets other eligibility requirements.

Intermediate Bulk Container (IBC) is a bulk container with a polyethylene inner bottle with a galvanized steel protective cage with a 275 and 330 gallon capacity and is reusable.

Loan is a nonrecourse marketing assistance loan on honey.
Nontable honey is honey having a predominant flavor of limited acceptability for table use even though such honey may be considered suitable for table use.

Person is an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

Table honey is any honey having a good flavor of the predominant floral source which can be readily marketed for table use.

Representative is a receiver, executor, administrator, guardian, or trustee representing the interests of a person or an estate.

§ 1434.4 Eligible producer.

(a) To be eligible to receive an individual or joint loan or loan deficiency payments under this part, a person must:

(1) Have produced honey in the United States during the calendar year for which a loan is requested and extracted on or before December 31 of such calendar year;

(2) Be responsible for the risk of keeping the bees and producing honey;

(3) Have a continuous beneficial interest in the honey from the time the honey was extracted through date of repayment of the loan;

(4) Store the honey pledged as loan collateral in eligible storage and in eligible containers that meet the requirements of § 1434.7 and § 1434.8, respectively; and

(5) Adequately protect the interests of CCC by providing security for a loan in accordance with the requirements in § 1434.8 and by maintaining in good condition the honey pledged as security for a loan.

(b) A person who complies with paragraph (a) of this section, who enters into a contract to sell the honey used as collateral for a loan but retains a beneficial interest in the honey and who does not receive an advance payment from the purchaser to enter into the contract unless the purchaser is a cooperative marketing association (CMA) that is eligible under paragraph (g) of this section, remains eligible for a loan.

(c) Two or more applicants may be eligible for a joint loan if:

(1) The conditions in paragraphs (a) and (b) of this section are met with respect to the commingled honey collateral stored in the same eligible containers they are tendering for a loan; and

(2) The commingled honey is not used as collateral for an individual loan that has not been repaid.

(d) Heirs who succeed to a beneficial interest in the honey are eligible for a loan if they:

(1) Assume the decedent’s obligation under a loan if such loan has already been obtained; and

(2) Assure continued safe storage of the honey if such honey has been pledged as collateral for a loan.

(e) A representative may be eligible to receive a loan on behalf of a person or estate who or which meets the requirements in paragraphs (a), (b), (c), and (d) of this section and that the honey tendered as collateral by the representative, in the capacity of a representative, shall be considered as tendered by the person or estate being represented.

(f) A minor who otherwise meets the requirements of this part for a loan shall be eligible to receive a loan only if the minor meets one of the following requirements:

(1) A court or statute has conferred the right of majority on the minor;

(2) A guardian has been appointed to manage the minor’s property and the applicable loan documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A surety, by furnishing a bond, guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(g) A CMA that the Executive Vice President, CCC, determines meets the requirements for CMA’s in part 1425 of this title may be eligible to obtain a loan on behalf of those members who themselves are eligible to obtain a loan provided that:
§ 1434.5

(1) The beneficial interest in the honey must always, until loan repayment or forfeiture, remain in the member who delivered the honey to the eligible CMA or its member CMA’s, except as otherwise provided in this part; and

(2) The honey delivered to an eligible CMA shall not be eligible for a loan if the member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this title.

§ 1434.5 Eligible honey.

To be eligible for a loan, the honey must:

(a) Have been produced by an eligible producer;

(b) Have been produced in the United States during the calendar year for which a loan is requested and extracted on or before December 31 of such calendar year;

(c) Be of merchantable quality deemed by CCC to be suitable for loan; that is, the honey:

(1) Is not adulterated;

(2) Has not been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization;

(3) Does not contain any ineligible honey floral sources; such as andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queen’s delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Price Support Division, FSA. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for loan;

(4) Does not contain excessive bees or bee parts, paint chips, wood chips, or other foreign matter; and

(5) Is not fermenting; and

(d) Be stored in acceptable containers.

§ 1434.6 Beneficial interest.

(a) To be eligible to receive marketing assistance loans under this part a producer must have the beneficial interest in the honey that is tendered to CCC for a loan. The producer must always have had the beneficial interest in the honey unless, before the honey was extracted, the producer and a former producer whom the producer tendering the honey to CCC has succeeded had such an interest in the honey. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for loans. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent’s obligations under an existing loan shall be eligible to receive loans whether succession to the honey occurs before or after extraction so long as the heir otherwise complies with the provisions of this part.

(b) A producer shall not be considered to have divested the beneficial interest in the honey if the producer retains title and control of the honey including the right to make all decisions regarding the tender of such honey to CCC for a loan, and the producer:

(1) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such honey if all other eligibility requirements are met and the option to purchase contains the following provision:

“Notwithstanding any other provision of this option to purchase or any other contract, title and control of the honey and beneficial interest in the honey, as specified in 7 CFR §1434.6, must remain with the producer until the buyer exercises this option to purchase the honey. This option to purchase will expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan which is secured by such honey;

(2) The date the CCC claims title to such honey; or

(3) Such other date as provided in this option.”

(2) Enters into a contract to sell the honey if the producer retains title, and beneficial interest in the honey and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.
(c) If loans are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the honey must always have been in the producer-member who delivered the honey to the CMA or its member CMA’s, except as otherwise provided in this section. Honey delivered to such a CMA shall not be eligible for loans if the producer-member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this chapter.

(d) A producer may, before the final date for obtaining a loan for honey, re-offer as loan honey any honey that has been previously pledged if the loan was repaid with principal plus interest, the loan on such re-offered honey shall have the same maturity date as the original loan.

§ 1434.7 Approved storage.

(a) Loans will be made only on honey in approved storage, which shall consist of a storage structure located on or off the farm that is determined by CCC to be under the control of the producer and affords safe storage for honey pledged as collateral for a loan. If the honey located in a farm storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a loan that is stored in the same structure.

(b) Producers may also obtain loans on honey packed in eligible containers and stored in facilities owned by third parties in which the honey of more than one person is stored if the honey that is to be pledged as collateral for a loan and that is stored identity preserved or is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer’s name, loan number, and lot number so as to identify the honey from other honey stored in the structure.

§ 1434.8 Containers and drums.

(a)(1) To be eligible for assistance under this part, honey must be packed in:

(i) CCC-approved, 5-gallon plastic containers;

(ii) 5-gallon metal containers;

(iii) Steel drums with a capacity not less than 5 gallons nor greater than 70 gallons; or

(iv) Plastic Intermediate Bulk Containers (IBC’s).

(2) Honey stored in plastic containers must be determined safe and secure from all possibility of contamination and of suitable purity for food contact use and meet food storage standards as provided by CCC. Plastic containers must be new or previously used only to store honey. Plastic containers previously used to store chemicals, pesticides, or any other product or substance other than honey are ineligible for honey storage. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover opening must not be damaged in any way that will prevent a tight seal. Containers that have been punctured and resealed will not be acceptable.

(4) CCC-approved 5-gallon plastic containers must hold approximately 60 pounds of honey. The containers must be free and clear of leakage and punctures and of suitable purity for food contact use and meet food storage standards as provided by CCC. Plastic containers must be new or previously used only to store honey. Plastic containers must be determined safe and secure from all possibility of contamination and of suitable purity for food contact use and meet food storage standards as provided by CCC. Plastic containers must be new or previously used only to store honey.

(5) The 5-gallon metal containers must hold approximately 60 pounds of honey, and must be new, clean, sound, uncased, and free from appreciable dents and rusts. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover opening must not be damaged in any way that will prevent a tight seal. Containers that have been punctured and resealed will not be acceptable.

(6) The steel drums must be an open type and filled no closer than 2 inches from the top of the drums. Drums must
be new or must be used drums that have been reconditioned inside and outside. Drums must be clean, treated inside and outside to prevent rusting, fitted with gaskets that provide a tight seal and have an inside coating suitable for honey storage.

(7) IBC’s are bulk containers with a polyethylene inner bottle and a galvanized steel protective cage, a capacity of either 275 or 330 gallons, and are reusable. IBC’s must be clean, sound and provide a tight seal.

(b) Honey shall not be eligible to be pledged as collateral for loans if such honey is stored in:

(1) 55-gallon steel drums having a tare weight less than 38 pounds, 30-gallon steel drums having a tare weight less than 26 pounds, or drums having removable liners of polyethylene or other materials;
(2) Bung-type drums;
(3) Bulk tanks;
(4) Containers that do not meet the specified requirements of paragraph (a) of this section or other CCC specifications or requirements.
(5) Steel drums that are severely dented as to cause damage to their lining, improper seal, or stacking capabilities; and
(6) Rusted drums with corroded areas.

§ 1434.9 Determination of quantity.

The amount of a marketing assistance loan and loan deficiency payment shall be based on 100 percent of the net weight in pounds of such quantity certified by the producer and verified by the county office representative for honey on Form CCC–633 (Honey) that is eligible to be pledged as security for the loan or LDP Estimates of the quantity of honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

§ 1434.10 Application, availability, disbursement, and maturity.

(a) A producer must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the appropriate FSA county office responsible for administering the program as provided under part 718 of this title. To receive loans and loan deficiency payments for honey, a producer shall execute a note and security agreement or loan deficiency payment application on or before March 31 of the year following the year in which the honey was extracted.

(b) A producer must request a loan at the county office of the county where the honey is stored if the honey is stored at the producer’s farm. A producer who requests a loan on honey stored in eligible storage other than the producer’s farm, may request loans at either the county office of the county where the storage facility is located or at the county office of the county where the producer’s main place of business is located. A CMA must request loans at the county office for the county in which the principal office of the CMA is located unless the State committee designates another county office. If the CMA has operations in two or more States, the CMA must file its loan applications at the county office for the county in which its principal office for each State is located.

(c) Loans will be made on the honey as declared and certified by the producer on Form CCC–633 (Honey), (Honey Loan Certification and Worksheet) at the time the honey is pledged as collateral for a loan. The producer is also required to declare and certify on Form CCC–633 (Honey) the class (table or nontable) and floral source of the honey at the time the honey is pledged as collateral for a loan.

(d) The request for a loan shall not be approved until all producers having an interest in the honey sign the note and security agreement and CCC approves such note and security agreement. The disbursement of loans will be made by county offices on behalf of CCC, for honey that:

(1) Has been extracted;
(2) Is in eligible storage; and
(3) Has not been blended or mixed with ineligible honey.

(e) Loans mature on demand but not later than the last day of the ninth calendar month following the month in which the note and security agreement was approved. When the final maturity date falls on a non-workday for county offices, CCC shall extend the final date to the next workday. Before the date
Commodity Credit Corporation, USDA

§ 1434.15 Personal liability.

(a) When applying for an individual or joint loan or loan deficiency payment, each producer agrees:

(1) That violation of the terms and conditions of this part and Form CCC–677 will cause harm or damage to CCC in that funds may be disbursed to the producer for a loan quantity that is not actually in existence or for a quantity for which the producer is not eligible.

(b) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification or:

(1) Unauthorized removal of honey, which shall include, but is not limited to, the movement of any loan quantity of honey from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer’s farm without prior written authorization from the county committee in accordance with §1434.14;

who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval from the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office.

§ 1434.14 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1434.13 Transfer of producer’s interest prohibited.

Absent written approval from CCC, the producer shall not transfer either the remaining interest in, or right to redeem, the honey pledged as collateral for a loan on honey nor shall anyone acquire such interest or right. Subject to the provisions of §1434.17, a producer determined in paragraph (a) of this section, a producer may re-offer as loan collateral any eligible honey that has been offered previously for a CCC loan and the loan has been repaid at principal plus interest only.

(f) If, after a loan is made, CCC determines that the producer or the honey collateral is not in compliance with any of the provisions of this part, the producer shall refund the total amount disbursed under loan and charges plus interest, including late payment interest as provided in part 1403 of this title.

(2) Any unauthorized disposition, which shall include, but is not limited to, the conversion of any loan quantity pledged as collateral for a loan without prior written authorization from the county committee in accordance with this section.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct that is in violation of this section. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages shall be assessed in addition to any loan refund and other charges that may be due. The amount of such damages shall be computed using the quantity of honey that is involved in the violation and the following formula. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by 10 percent of the loan rate applicable to the loan note for each offense.

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 10 percent of the loan rate applicable to the loan note.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity involved in the violation plus charges and interest; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan for all of the honey under loan, plus charges and interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm; and

(iii) Consumption of loan collateral.

(g) If there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i) If a producer:

(1) Makes any fraudulent or misleading representation in obtaining a loan, maintaining, or settling a loan;

(2) Disposes or moves the loan collateral without the approval of CCC, such loan shall become payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs that CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts;

(E) Late payment interest as may be provided for in part 1403 of this title; and

(F) Liquidated damages assessed under paragraph (c) of this section; and

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent
or misleading representation to CCC or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with this section, the value of the settlement for such collateral removed by CCC shall be determined by CCC according to this section.

(j) A producer shall be personally liable for any damages resulting from honey removed by CCC, containing mercurial compounds or other substances poisonous to humans, animals, or food commodities that are contaminated.

(k) If the amount disbursed under a loan or in settlement thereof exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess and charges, plus interest, and for any other sanction as may be allowed by law.

(l) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(m) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note and security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer’s claimed share in the honey, or loan proceeds, after execution of the note and security agreement by CCC.

(n) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

(o) Remedies set out in this section are in addition to remedies the CCC will have through its security interest on honey that secures the repayment of the loan made on the honey.

(p) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.


§ 1434.16 Release of the honey pledged as collateral for a loan.

(a)(1) A producer shall not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(k) If the amount disbursed under a loan or in settlement thereof exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess and charges, plus interest.

(l) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(m) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note and security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer’s claimed share in the honey, or loan proceeds, after execution of the note and security agreement by CCC.

(n) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

(o) Remedies set out in this section are in addition to remedies the CCC will have through its security interest on honey that secures the repayment of the loan made on the honey.

(p) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.


§ 1434.17 Liquidation of loans.

(a) The producer is required to repay the loan on or before maturity by payment of the amount of loan, plus any charges, plus interest.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days
§ 1434.18 Loan repayments.

(a) A honey producer may repay a nonrecourse marketing assistance loan during the loan period at a rate that is the lesser of:

(1) The principal, plus interest; or

(2) The alternative repayment rate for honey as determined by the Secretary.

(3) In the event of a severe disruption to marketing, transportation, or related infrastructure, the Secretary may modify the repayment rate otherwise applicable under this section for marketing assistance loans. Any adjustment made to the repayment rate for marketing assistance loans for honey under this part will be in effect on a short-term and temporary basis, as determined by the Secretary.

(b) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the prevailing domestic market price for honey, on a monthly basis.


§ 1434.19 Settlement.

The value of the settlement of loans shall be made by CCC on the following basis:

(a) With respect to nonrecourse loans, the schedule of premiums and discounts for the commodity:

(1) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(2) If the proceeds received from the sale of the honey so computed are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the honey, such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.


§ 1434.20 Foreclosure.

(a) Upon maturity and nonpayment of the loan, title to the unredeemed honey securing the loan shall vest in CCC.

(b) If the total amount due on a loan or the unpaid amount of the note and charges, plus interest is not satisfied upon maturity, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may also be effected without removing the honey from storage. The honey may be processed before sale and CCC may become the purchaser of the whole or any part of the honey at either a public or private sale.

(1) If the value of the collateral computed at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency and CCC may take any action against the producer to recover the deficiency; or

(2) If the proceeds received from the sale of the honey so computed are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the honey, such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1434.21 Loan deficiency payments.

(a) Loan deficiency payments shall be available for 2008 through 2012 crop honey.

(b) In order to be eligible to receive loan deficiency payment for a crop of honey, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loan in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) Submit a request for a honey Loan deficiency payment on the form as CCC prescribes.
Commodity Credit Corporation, USDA

§ 1434.22 Death, incompetency, or disappearance; appeals; other loan provisions.

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the county office that made the loan, be made to the persons who would be entitled to such producer’s share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part shall be subject to the provisions of 7 CFR parts 11 and 780.


PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Sec.

1435.1 Applicability.
1435.2 Definitions.
1435.3 Maintenance of records.
1435.4 Administration.
1435.5 Other regulations.

Subpart B—Sugar Loan Program

1435.100 Applicability.
1435.101 Loan rates.
1435.102 Eligibility requirements.
1435.103 Availability, disbursement, and maturity of loans.
1435.104 Loan maintenance.
1435.105 Loan settlement and foreclosure.
1435.106 Miscellaneous provisions.

Subpart C—Information Reporting and Recordkeeping Requirements

1435.200 Information reporting.
1435.201 Civil penalties.

Subpart D—Flexible Marketing Allotments For Sugar

1435.300 Applicability.
1435.301 Annual estimates and quarterly re-estimates.
1435.302 Establishment of allotments.
1435.303 Adjustment of the overall allotment quantity.
1435.304 Beet and cane allotments.
1435.305 State cane sugar allotments.

§ 1435.1 Applicability.

These regulations set forth the terms and conditions for the 2008 through 2012 crop years under which the Commodity Credit Corporation (CCC) will:

(a) Make loans and enter agreements with eligible processors,
(b) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,
(c) Administer sugar marketing allotments, and
(d) Administer an inventory disposition program to sell CCC inventory to bioenergy producers and exchange CCC inventory for processor reductions in production or certificates of quota entry.


§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

Ability to market means, for purposes of determining the State cane sugar allotments and sugarcane processor allocations for Hawaii and Puerto Rico, the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year; for determining the remaining State cane sugar allotments, the highest single year of sugar production for the State during the 1999 through 2003 crop years; for determining the sugarcane processor allocations for mainland cane States other than Louisiana, the highest single year of sugar production for the processor during the 1999 through 2003 crop years; and, for determining the sugarcane processor allocations for Louisiana, the simple average of two amounts for each processor, including:

(1) The production of sugar for the processor, stated in short tons, raw value, during Crop Year 2003, as determined by CCC; and
(2) The simple average of 3 years of the processor’s production of sugar, stated in short tons, raw value, from among the 1999 through 2003 crop years, excluding the year in which the production was the highest and the year in which the production was the lowest. With respect to the 2003 crop year, each processor’s production shall be the...
same as determined under paragraph (1).

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State’s cane sugar allotment among the State’s sugarcane processors.

Beet sugar means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses, or in-process beet sugar, whether produced domestically or imported.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

CCC means the Commodity Credit Corporation.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane sugar refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

Crop year means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses is considered to be from the crop year the de-sugaring occurred.

Deputy Administrator means the Deputy Administrator, Farm Programs, FSA, or designee.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Edible syrups means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

Executive Vice President, CCC, means the Executive Vice President, CCC, or designee.

Facility means a factory, mill, or plant.

Farm means that entity as defined in §718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means that year beginning October 1 and ending the following September 30.

FSA means Farm Service Agency.

Human consumption means sugar for use in human food, beverages, or similar products.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

In-process beet sugar means the intermediate sugar-containing product, as CCC determines, produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported.

In-process cane sugar means the intermediate sugar-containing product, as CCC determines, produced from the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption.

Market or marketing means the transfer of title associated with the sale or other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the Sugar Loan Program, exportation of sugar
from the United States Customs Territory eligible to receive credits under reexport programs for refined sugar or sugar-containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under the Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

Nonrecourse loan means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at loan maturity, in satisfaction of loan indebtedness.

Overall allotment quantity means, on a national basis, the total quantity of domestically produced sugar, raw value, processed from sugarcane, sugar beets or in-process beet sugar (whether the sugar beets or in-process beet sugar are produced domestically or imported), and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Past processing means, for determining Hawaii and Puerto Rico’s allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for determining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Per-acre yield goal means a State’s yield level that is established at not less than the State’s two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

Proportionate share State means a State with an established allotment and more than 250 sugarcane producers in the State, other than Puerto Rico.

Raw sugar means any sugar that is to be further refined or improved in quality other than in-process sugar.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the “total sugar content” (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as CCC determines.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.
§ 1435.5 Other regulations.

The following are applicable to this part:

Commodity Credit Corporation, USDA

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets, sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar.

Sugar products means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

Sugarcane processor means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S. market value means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

USDA means the United States Department of Agriculture.

§ 1435.5 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action not under this part; or

(2) Require a county committee to withhold taking any action not under this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

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

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

§ 1435.5 Other regulations.

The following are applicable to this part:
§ 1435.100
(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.
(b) Part 718—Provisions applicable to multiple programs.
(c) Part 780—Appeal regulations.
(d) Part 1403—Debt settlement policies and procedures.
(e) Part 1405—Loans, purchases, and other operations.

Subpart B—Sugar Loan Program

§ 1435.100 Applicability.
(a) The regulations of this subpart set forth the terms and conditions under which CCC will make non-recourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.
(b) Loan rates used in administering the loan program are available in FSA State and county offices.
(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

§ 1435.101 Loan rates.
(a) The national average loan rate for raw cane sugar produced from domestically grown sugarcane is: 18 cents per pound for the 2008 crop year; 18.25 cents per pound for the 2009 crop year; 18.50 cents per pound for the 2010 crop year; 18.75 cents per pound for the 2011 crop year; and 18.75 cents per pound for the 2012 crop year.
(b) The national average loan rate for refined beet sugar from domestically grown sugar beets is: 22.90 cents per pound for the 2008 crop year; and a rate equal to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.
(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.
(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

§ 1435.102 Eligibility requirements.
(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.
(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC’s approval of the note and security agreement and the CCC storage agreement.
(c) Sugar pledged as collateral during the crop year:
(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;
(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;
(3) May not have been processed from imported sugarcane, sugar beets in-process sugars, or molasses;
(4) Must have been processed in the United States; and
(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.
(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:
(1) Refined beet sugar to be pledged as loan collateral must be:
   (i) Dry and free flowing; and
   (ii) Free of excessive sediment; and
(iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:
   (i) Of reasonable grain size; and
   (ii) Free of objectionable color, flavor, odor, moisture or other characteristic that would impair the merchantability or that would impair or prevent the use of such sugar for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

§ 1435.103 Availability, disbursement, and maturity of loans.

(a) Before obtaining a loan, a processor must:
   (1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.
   (2) Execute a note and security agreement, and storage agreement with CCC;
   (3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;
   (4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:
   (i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and
   (ii) Designate the loan to which the reoffered loan collateral was originally pledged.

   (2) The subsequent loan shall have the same maturity date as the original loan.

(d) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of §1435.102.

(e)(1) Loans will mature at the earlier of:
   (i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or
   (ii) September 30 following disbursement of the loan.

   (2) CCC may accelerate loan maturity dates under §1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan must:
   (1) Be requested by the processor during the following October;
§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:
   (1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;
   (2) Pay interest on the principal at a rate determined in part 1405 of this chapter.
   (b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.
   (c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.
   (1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.
   (2) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.
   (3) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.
   (d) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor’s loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.
   (2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.
   (3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.
   (4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agree to pay CCC an amount necessary to satisfy the processor’s loan indebtedness regarding collateral being sold. Any such approval shall not:
      (i) Constitute a release of CCC’s security interest in the loan collateral; or
      (ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.
   [67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.
   (b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.
   (c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.
(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, before the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar:

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the next business day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(1) If a processor’s nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor’s indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

(1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and

(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.

(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.
§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or a Federal holiday, the report shall be due the next business day.

(b) Any processor must, upon CCC’s request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC’s request, provide such information as CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for the extraction of sugar for domestic human consumption must report such information as CCC requires, including the quantities of the products imported and the sugar content or equivalent of the products.

(f) The Secretary will collect information on the production, consumption, stocks and trade of sugar in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(g) The Secretary will collect publicly available information on the production, consumption, and trade of high fructose corn syrup in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(b) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(i) By November 20 of each year, sugar beet processors, sugarcane processors, sugarcane refiners, and importers of sugars, syrups, and molasses, as selected by CCC, will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its information submitted to CCC during the previous October 1 through September 30 period.

(j) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.201 Civil penalties.

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under §1435.200(a) through (e), is subject to a civil penalty of no more than the amount specified at §3.91(b)(10)(ii) of this title for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250–0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of an affirmation of the assessment of
Section 1435.300 Subpart D—Flexible Marketing Allotments For Sugar

Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

1. Processor marketings of sugar domestically processed from sugar beets or in-process beet sugar, whether such sugar beets or in-process beet sugar were produced domestically or imported,

2. Processor marketings of sugar processed from sugarcane,

3. Distribution of a processor’s allocation to producers in proportionate share States, and

4. Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to marketing imported raw or refined sugar.

(c) This subpart applies throughout the United States and Puerto Rico.

Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

1. Quantity of sugar that will be subject to human consumption in the United States during the crop year;

2. Quantity of sugar that will provide for reasonable carryover stocks;

3. Quantity of sugar that will be used for human consumption in the United States from carry-in stocks;

4. Quantity of sugar that will be available from domestically processed sugarcane, sugar beets, and in-process beet sugar; and

5. Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in §1435.200.

Establishment of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugarcane, sugar beets, or in-process beet sugar, whether the sugar beets or in-process beet sugar is domestically produced or imported at a level:

1. That is sufficient to maintain raw and refined sugar prices above minimum prices to avoid forfeiture of loans to the CCC, but

2. Not less than 85 percent of estimated quantity of sugar for domestic human consumption for the crop year.

(b) Determinations under this section to establish marketing allotments will be published in the Federal Register and accompanied by a statement of the reasons for the determination.

Adjustment of the overall allotment quantity.

(a) The overall allotment quantity may be adjusted, as CCC determines appropriate, but never to a quantity less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year:

1. To avoid forfeiture of sugar loan collateral to CCC,

2. Ensure adequate supplies of raw and refined sugar in the domestic market, and,
(3) To reflect changes in estimated sugar consumption, stocks, production, or imports based on re-estimates under §1435.301.

(b) Determinations to adjust the overall allotment quantity will be published in the Federal Register and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and sugar products any individual processor marketed by the time of the reduction exceeds the processor’s reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor’s allocation under an allotment next established.

§1435.304 Beet and cane sugar allotments.

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

§1435.305 State cane sugar allotments.

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor’s allocation under 1435.303.

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

1. Past marketings of cane sugar,
2. Past processing of cane sugar, and
3. The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States’ respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reassigned as provided in §1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§1435.306 Allocation of marketing allotments to processors.

(a) Each sugar beet processor’s allocation, other than a new entrant’s, of the beet allotment will be calculated as the beet processor’s share times the beet sector allotment:

1. A beet processor’s share is calculated as the beet processor’s adjusted weighted average sugar production divided by the sum of all beet processors’ adjusted weighted average sugar production.

2. A beet processor’s weighted average sugar production equals 0.25 times its 1996-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

3. A beet processor’s weighted average sugar production shall be adjusted by the following, as CCC determines:

   (i) Increased 1.25 percent of the sum of all beet processors’ weighted average sugar production for opening a sugar beet processing factory during the 1996 through 2000 crop years;

   (ii) Decreased 1.25 percent of the sum of beet processors’ weighted average sugar production for closing a sugar beet processing factory during the 1996 through 2000 crop years.
Commodity Credit Corporation, USDA

§ 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower’s contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,
§ 1435.308 New entrants.
(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:
(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year,
(2) CCC will consider any adverse effects of the allocation upon existing processors and producers,
(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,
(4) A new entrant’s allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and
(5) A new entrant will be provided, as determined by CCC:
(i) A share of its State’s cane allotment if the processor is located in Hawaii, Florida, Louisiana, or Texas or
(ii) A share of the overall mainland cane allotment if the processor is located in any mainland State not listed in paragraph (a)(5)(i) of this section.

(b) For proportionate share States, CCC will establish proportionate shares for the sugarcane required to fill the allocation.

(c) If a new entrant beet processor constructs a new facility or reopens a facility that currently has no allocation, but last produced beet sugar from sugar beets and sugar beet molasses prior to the 1998 crop year, CCC will:
(1) Assign an allocation to the new entrant to enable it to achieve a facility utilization rate comparable to other similarly-situated sugar beet processors and
(2) Reduce all other beet processor allocations by a like amount on a prorata basis.

(d) If a new entrant acquires an existing facility with production history that processed sugar beets for the 1998 or subsequent crop year, CCC will:
(1) Assign the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount, or
(2) If the new entrant and the processor holding the allocation of the existing facility cannot agree on an allocation amount, the new entrant will be denied a beet sugar allocation.

VerDate Mar<15>2010 10:35 Mar 12, 2014 Jkt 232021 PO 00000 Frm 00713 Fmt 8010 Sfmt 8010 Y:\SGML\232021.XXX 232021ehiers on DSK2VPTVN1PROD with CFR

\section*{Reassignment of deficits.}

(a) CCC will determine, from time to time, whether sugar beet or sugarcane processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor’s ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

(1) First, to allocations of other sugarcane processors within that State based on each processor’s initial allocation share of the State’s allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State’s initial share of the cane sugar allotment, but no State may receive reassigned State allotment such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports of raw cane sugar.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

(e) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (e)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (e)(1) and (e)(2) of this section have been implemented,
be reassigned to imports of raw cane sugar.

(f) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.


§ 1435.310 Sharing processors’ allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

1. The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer’s production history, and

2. The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer’s production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

1. Pays growers for sugar from their delivered sugarcane in the following priority:
   (i) Sugar production from proportionate share acreage; as established under §1435.311, for producers determined by CCC, who:
      (A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001, or
      (B) Obtained an allocation transfer from a predecessor mill,
   (ii) Sugar production from base acreage, as established under §1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then
   (iii) All other sugar production.

2. In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator’s farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

(e) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor’s allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.


§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State’s allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:
Commodity Credit Corporation, USDA

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer’s acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm’s sugarcane acreage base history and increase the receiving farm’s crop acreage base.

(1) All farm owners must agree in writing to the transfer.

(2) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

(b) Sugarcane acreage base that has been converted to nonagricultural use on or before May 13, 2002, may be transferred to other land suitable for the production of sugarcane under the following terms:

(1) CCC must notify 1 or more affected landowners within 90 days of becoming aware of the conversion, of their rights to transfer the base to 1 or more farms owned by the landowner;

(2) The landowner has 90 days from the date the landowner was notified to transfer the base;

(3) If the landowner does not exercise this transfer right, the grower of record will have 90 days after being notified by CCC to transfer the base to 1 or more farms owned by the grower;

(4) If the transfers as specified under paragraphs (b)(2) or (3) of this section are not accomplished during the specified periods, FSA county committee will place the base into a pool for possible reassignment to other farms;

(5) After providing notice to farm owners, operators and growers of record in the county, the committee will accept requests from farm owners, operators, and growers in the county;

(6) The county committee will assign the base to other sugarcane farms in
The county that are eligible and capable of accepting the acreage base, based on a random drawing among requests received under paragraph (b)(5) of this section;

(7) Any unassigned base will be made available to the State FSA committee and be allocated to remaining FSA county committees in the State representing counties with farms eligible for assignment of the base, based on a random drawing; and

(8) After the acreage base has been reassigned, the acreage base will remain on the farm and subject to the transfer provisions of paragraph (a) of this section.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

§ 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

§ 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State’s cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer’s control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:
Commodity Credit Corporation, USDA § 1435.319

(1) Evidence exists for inspection and determination of:
(i) Existence of the crop;
(ii) Use made of the crop;
(iii) Lack of crop; or
(iv) Disaster condition affecting the crops.

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under §1435.318.

§ 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor’s allocation or any producer’s proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

§ 1435.318 Penalties and assessments.

(a) Any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor’s allocation will be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) CCC may assess liquidated damages, as specified in a surplus allocation survey and agreement, with respect to a surplus allocation still existing after the end of a crop year if the processor had a surplus allocation because the processor provided incomplete or erroneous information to CCC.

(c) Under §359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm’s proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm’s proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed its marketing allocation; or
(2) Diverted to a use other than sugar or seed if:
   (i) The sugarcane producer requests and pays for a CCC field inspection, and
   (ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.

(d) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(e) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed the amount specified at §3.91(b)(10)(iii) of this title. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer’s good-faith effort to comply fully with such terms and conditions, and the producer’s substantial performance.

(f) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than the amount specified at §3.91(b)(10)(iv) of this title for each violation.


§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250-0501.
§ 1435.400

(b) For issues arising under section 359d establishing allocations for marketing allotments, and sections 359f(b) and (c), and section 359i of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC 20250–9200. Any hearing conducted under this paragraph shall be in accordance with instructions issued by USDA’s Judicial Officer.

(c) For issues arising under §§ 359a–359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title. For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.


Subpart E—Disposition of CCC Inventory

§ 1435.401 CCC sugar inventory disposition.

(a) CCC will dispose of inventory in the following manner, if CCC has not determined there is an emergency shortage of sugar for human consumption in the domestic market:

1. By sale to bioenergy producers under the Feedstock Flexibility Program as specified in subpart G of this part.

2. By transfer to sugarcane and sugar beet processors under the Processor Sugar Payment-In-Kind Program as specified in subpart F of this part.

3. By the buyback of certificates of quota eligibility (CQEs), or

4. By the use of any other authority for the disposition of CCC-owned sugar for nonfood use or otherwise in a manner that does not increase the net quantity of sugar available for human consumption in the United States.

(b) CCC may use any of its authority for the disposition of CCC-owned sugar, if CCC has determined there is an emergency shortage of sugar for human consumption in the domestic market caused by war, flood, hurricane, or other natural disaster, or similar event, as determined by CCC.

Subpart F—Processor Sugar Payment-In-Kind (PIK) Program

§ 1435.500 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for a CCC loan.


§ 1435.501 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is
Commodity Credit Corporation, USDA

§ 1435.502

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disk ing, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

§ 1435.502 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disk ing, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

§ 1435.502 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disk ing, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.
§ 1435.503 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;
(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;
(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and
(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor’s bid amount that CCC accepts, by

(2) The value of CCC’s inventory at the storage location at which title will transfer from CCC to the processor.


§ 1435.504 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.


§ 1435.505 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.


Subpart G—Feedstock Flexibility Program

SOURCE: 78 FR 45446, July 29, 2013, unless otherwise noted.

§ 1435.600 General statement.

(a) The provisions of this subpart will be applied when CCC determines that buying sugar is necessary to avoid forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) This subpart will be applicable to:

(1) Any sugar seller who contracts with CCC to sell sugar, an
(2) Any bioenergy producer who contracts with CCC to purchase sugar for the production of bioenergy.

§ 1435.601 Sugar surplus determination and public announcement.

(a) CCC will estimate by September 1 the quantity of sugar that will be made available for purchase and sale under FFP for the following crop year.
Not later than January 1, April 1, and July 1 of the fiscal year, CCC will re-estimate the quantity of sugar that will be made available for purchase and sale under the FFP for the crop year.

(c) CCC will announce by press release the estimates in paragraphs (a) and (b) of this section, which will reflect CCC’s forecast of sugar likely to be forfeited to CCC and any uncertainty surrounding that forecast.

§ 1435.602 Eligible sugar to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar for FFP that is eligible to be used as collateral under the CCC Sugar Loan Program, as specified in §1435.102.

(b) Raw sugar, refined sugar, or in-process sugar purchased directly from any domestic sugar beet or sugarcane processor that made the raw sugar, refined sugar, or in-process sugar will be credited against the processor’s sugar marketing allocation. (The definition for “marketing” in §1435.2 applies to this subpart.)

(c) CCC will only purchase sugar located in the United States.

(d) CCC will evaluate an offer to sell sugar to CCC based upon CCC’s estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing thick juice (an in-process sugar) would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the volume of the thick juice in evaluating the per unit sales price.

(e) CCC will only purchase the sugar if such purchase would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

§ 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

§ 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) [Reserved]

§ 1435.605 Competitive procedures.

(a) CCC will generally issue tenders for bids, before entering into contracts with any eligible sugar seller or buyer, with the intent of selecting the bid(s) that represents the least cost to CCC or removing sugar from the market.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of forfeitures of sugar to CCC.

§ 1435.606 Miscellaneous.

(a) As a sugar buyer, a bioenergy producer must take possession of the sugar no more than 30 days from the date of CCC’s purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for the sugar purchased under this program. A bioenergy producer must assume any storage costs accrued from date of contract to date of taking possession of the sugar.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof as specified by CCC that the sugar has been used in the bioenergy factory for the production of bioenergy and permit access for USDA to verify compliance.

§ 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]
§ 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by State law, CCC may adapt certain procedures relating to those issues that may vary between States.

§ 1436.2 Administration.

(a) The Farm Storage Facility Loan Program will be administered under the general supervision of the Executive Vice President, CCC or designee and will be carried out in the field by FSA State committees, FSA county committees and FSA employees.

(b) FSA State committees, FSA county committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The FSA State committee will take any action required by these regulations that has not been taken by the county committee. The FSA State committee will also:

(1) Correct, or require the FSA county committee to correct, any action taken by such FSA county committee that is not in accordance with the regulations of this part; and

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

(d) No provision or delegation herein to a State or FSA county committee will preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or FSA county committee.

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

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, will be void.

(g) The purpose of the Farm Storage Facility Loan program is to provide CCC funded loans for producers of grains, oilseeds, pulse crops, sugar, hay, renewable biomass, fruits and vegetables (including nuts), and other storable commodities, as determined by the Secretary, to construct or upgrade storage and handling facilities for the eligible facility loan commodities they produce.

§ 1436.3 Definitions.

The following definitions will be applicable to the program authorized by this part and will be used in all aspects of administering this program:

* Aggregate outstanding balance* means the sum of the outstanding balances of all loans disbursed under this part to each borrower signing the note and security agreement.

* Assumption* means the act or agreement by which one borrower takes over or assumes the debt of another borrower.

* Cold storage facility* means a facility or rooms within a facility that are specifically designed and constructed for...
the cold temperature storage of perishable commodities. The temperature and humidity in these facilities must be able to be regulated to specified conditions required for the commodity requiring storage.

Collateral means the storage structure; the drying, handling, and cold storage equipment; and any other equipment securing the loan.

Commercial facility means any structure, used in connection with or by any commercial operation including, but not limited to, grain elevators, warehouses, dryers, processing plants, or cold storage facilities used for the storage and handling of any agricultural product, whether paid or unpaid. Any structure suitable for the storage of an agricultural product that is in working proximity to any commercial storage operation shall be considered to be part of a commercial storage operation.

Commercial storage means the storing of any agricultural product, whether paid or unpaid, for persons other than the owner of the structure, except for family members and tenants or landlords with a share in the eligible facility loan commodity requiring storage.

Crop of economic significance means any insurable facility loan commodity that contributes 10 percent or more of the total expected value of all crops grown by the loan applicant except if the expected liability under the catastrophic level of crop insurance for a crop is equal to or less than the administrative fee for the crop, that crop shall not be economically significant.

Facility loan commodity means corn, grain sorghum, oats, wheat, barley, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, other oilseeds as determined and announced by CCC, dry peas, lentils, or chickpeas harvested as whole grain, peanuts, hay, renewable biomass, and fruits and vegetables (including nuts). Corn, grain sorghum, wheat, and barley are included whether harvested as whole grain or other than whole grain.

Financing statement means the appropriate document that gives legal notice of a security interest in personal property when properly filed or recorded.

Hay means a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers.

Non-movable or non-salable collateral means either collateral the county committee determines cannot be sold and moved to a new location because of the type of construction involved or because the collateral has deteriorated to the point that it has no sale recovery value.

Renewable biomass means any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees (excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

Resale collateral value means collateral that can be sold and moved to a new location for which compensation equal to the outstanding loan value can be expected.

Satisfactory credit history means a history of repaying debts as they came due unless the failure to repay or tardiness in payment was due to circumstance beyond the applicant’s control as determined by CCC upon proof submitted by the applicant.

Severance agreement means an agreement under which a party may consent to the security interest of another in property thereby allowing the severance of a fixture from the real estate.

Subordination agreement means any agreement under which a party may subordinate a security interest in property to the interest of another party.

§ 1436.4 Application for loans.

(a) An application for a loan must be submitted:

(1) For all loans, except loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county office that maintains the records of the farm or farms to which the application applies. With State office approval, loans may be made or serviced by a county office other than the administrative county office.

(2) For loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county FSA office that maintains the records of the farm or farms to which the application applies, if the facility will be located on land that has farm records established at the county office. If the commodities will be produced on land that does not have farm records established at the county office, the application must be submitted to the county FSA office that services the county where the facility will be located.

(b) Upon request, the applicant must furnish information and documents as the State or county committee deems reasonably necessary to support the application. This may include financial statements, receipts, bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of access.

(c) For sugar storage facility loans, a loan application must be submitted to the county FSA office that maintains the applicant’s records. If no such records exist, loan applications must be submitted to the county office serving the headquarters location of the sugar processor.

(d) Submitting an application does not ensure loan approval nor create any liability on behalf of CCC. Borrowers who authorize delivery, site preparation, or construction actions without an approved loan, do so at their own risk.

[74 FR 41587, Aug. 18, 2009]

§ 1436.5 Eligible borrowers.

(a) Borrower means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

(1) Has a satisfactory credit history according to the definition in §1436.3 and as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(2) Demonstrates an ability to repay the debt arising under this program using a financial statement acceptable to CCC prepared within 90 days of the date of application, as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(3) Has no disqualifying delinquent Federal debt under the Debt Collection Improvement Act of 1996;

(4) Is a producer of a facility loan commodity as determined by CCC;

(5) Demonstrates a need for increased storage capacity as determined by CCC if the applicant is applying for a loan for a storage structure. The Deputy Administrator, Farm Programs, may issue a waiver, if requested, on a case by case basis if a crop share landlord or tenant requests to construct a structure to store commodities produced on the farm but only one of the two wishes to accept loan liability;

(6) Annually provides proof of crop insurance offered under the Federal Crop Insurance Program for insurable crops of economic significance on all farms operated by the borrower in the county where the storage facility is located. Crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not; crop insurance under the Federal Crop Insurance Program may not be available for certain renewable biomass commodities;

(7) Is in compliance with the U.S. Department of Agriculture (USDA) provisions for highly erodible land and wetlands conservation provisions according to 7 CFR part 12;

(8) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;
(9) Annually provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and annually provides proof that the structures for which the loan is made has all peril structural insurance;

(10) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR parts 1500–1508; and

(11) Has not been convicted under Federal or State law of a disqualifying controlled substance violation or a crop insurance violation under 7 CFR part 718.

(b) For sugar facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

§ 1436.6 Eligible storage or handling equipment.

(a) For all eligible facility loan commodities, except sugar and fruits and vegetables, loans may be made only for the purchase and installation of eligible storage facilities, and permanently affixed drying and handling equipment, or for the remodeling of existing storage facilities or permanently affixed drying and handling equipment as provided in this section. The loan collateral must be used for the purpose for which it was delivered, erected, constructed, assembled, or installed for the entire term of the loan. Eligible storage and handling facilities include the following:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 15 years;

(2) New oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the original manufacturer’s design specifications using original manufacturer’s rebuild kits or kits from a supplier approved by the Deputy Administrator, Farm Programs, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and with a useful life of at least 15 years; and

(3) New flat-type storage structures including a permanent concrete floor, designed for and primarily used to store facility loan commodities for the term of the loan and having a useful life of at least 15 years;

(4) New structures that are bunkertype, horizontal, or open silo structures designed for whole grain storage or other than whole grain storage and having a useful life of at least 15 years;

(5) New structures suitable for storing hay that are built according to acceptable design guidelines from the National Institute of Food and Agriculture (NIFA) or land-grant universities and with a useful life of at least 15 years; and

(6) New structures suitable for storing renewable biomass that are built according to acceptable industry guidelines and with a useful life of at least 15 years.

(b) For all eligible facility loan commodities, except sugar and fruits and vegetables, the calculation of the loan amount may include costs associated with building, improving, or renovating an eligible storage or handling facility, including:

(1) Permanently affixed grain handling equipment and grain drying equipment, including perforated floors determined by the approving committee to be needed and essential to the proper functioning of the grain storage system;

(2) Safety equipment as required by CCC and meeting OSHA requirements such as lighting, and inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored eligible facility loan commodity, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the eligible facility loan commodity storage and handling equipment;

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to
the proper operation of the eligible facility loan commodity storage and handling equipment; and

(6) Flooring appropriate for storing hay and renewable biomass suitable for the region where the facility is located and designed according to acceptable guidelines from NIFA or land-grant universities.

(c) For all eligible facility loan commodities, except sugar and fruits and vegetables, no loans will be made for installation or related costs of:

(1) Portable grain drying equipment, portable handling equipment and portable augers;

(2) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(3) Used structures or handling equipment, not including remanufactured oxygen-limiting storage structures built to the manufacturer’s original design specifications as specified in paragraph (a)(2) of this section;

(4) Structures that are not suitable for storing the facility loan commodities for which a need is determined;

(5) Storage structures to be used as a commercial facility. Any facility that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation; and

(6) Portable or permanent weigh scales.

(d) Loans for all eligible facility loan commodities, except sugar and fruits and vegetables, may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if the county committee determines there is a need for the capacity of the structure, but loans will not be approved solely for the replacement of worn out items such as motors, fans, or wiring.

(e) Loans for all eligible facility loan commodities except sugar and fruits and vegetables may be approved for new storage and handling components of a pre-owned structure provided the completed facility has a useful life of at least 15 years. The pre-owned structure must be purchased and moved to a new storage location. Eligible items for such a loan include costs such as new bin rings or roof panels needed to make a purchased pre-owned structure usable, new aeration systems, site preparation, construction off-farm paid labor cost, foundation material and off-farm paid labor. Ineligible items for such a loan include the cost of purchasing and moving the used structure.

(f) The provisions of this paragraph apply only to sugar storage facility loans.

(1) The loan amount may include costs associated with the purchase, installation, building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the sugar storage and handling equipment.

(2) Sugar storage facility, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.
§ 1436.8 Security for loan.

(a) Except as agreed to by CCC, all loans must be secured by a promissory note and security agreement covering

(3) No sugar storage facility loans will be made for:

(i) Portable handling equipment and portable augers;

(ii) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(iii) Used or pre-owned structures or handling equipment;

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(g) The provisions of this paragraph apply only to fruit and vegetable cold storage facility loans.

(1) For cold storage facility loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling, or renovating an eligible storage or handling facility. Costs associated with the construction of a permanently installed cold storage facility include, but are not limited to, the following: An insulated cement slab floor, insulation for walls and ceiling (including, but not limited to, loose fill cellulose, foam insulation sheets, sprayed-on and foam-in-place materials), and a vapor barrier.

(2) Eligible facilities include, but are not limited to, the following:

(i) A new cold storage facility of wood pole and post construction, steel, or concrete, that is suitable for storing the fruits and vegetables produced by the borrower and with a useful life of at least 15 years;

(ii) New walk-in prefabricated permanently installed cold storage coolers that are suitable for storing the producer’s fruits and vegetables and with a useful life of at least 15 years;

(iii) Permanently affixed equipment necessary for a cold storage facility such as refrigeration units or system and circulation fans;

(iv) Permanently installed equipment to maintain or monitor the quality of produce stored in a cold storage facility;

(v) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of a cold storage facility.

(3) For cold storage facility loans, loans may be approved for financing additions or modifications to an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

(4) No cold storage facility loans will be made for:

(i) Portable structures;

(ii) Portable handling and cooling equipment;

(iii) Used or pre-owned structures, or cooling and handling equipment; or

(iv) Structures that are not suitable for a fruit or vegetable cold storage facility.

§ 1436.7 Loan term.

(a) For eligible facility loan commodities other than sugar, the term of the loan will be 7, 10, or 12 years, based on the total loan principal, from the date a promissory note and security agreement is completed on both the partial and final loan disbursements. The applicant will choose, if applicable, a loan term when submitting the loan application and total cost estimates.

(1) For a loan with the principal of $100,000 or less, the term is 7 years.

(2) For loans from $100,001 through $250,000, the borrower will choose a term of 7 or 10 years.

(3) For loans from $250,001 through $500,000, the borrower will choose a loan term of 7, 10, or 12 years.

(b) No extensions of the loan term will be granted. The loan balance and all related costs are due at the end of the loan term.

(c) For a sugar-related loan:

(1) CCC, at its discretion, may authorize a maximum loan term of 15 years. The minimum loan term of a sugar-related loan is 7 years.

(2) The loan balance and costs are due at the end of the loan term, which will be established on the date the promissory note and security agreement is executed.

§ 1436.8 Security for loan.
the farm storage facility and such other assurances as CCC may demand, subject to the following:

(1) The promissory note and security agreement must grant CCC a security interest in the collateral and must be perfected in the manner specified in the laws of the State where the collateral is located.

(2) CCC’s security interest in the collateral must be the sole security interest in such collateral except for prior liens on the underlying real estate that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the real estate will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) For any loan amounts of $50,000 or less, CCC will not require a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located, if the borrower:

(1) Agrees to increase the down payment on the storage facility loan from 15 percent to 20 percent; or

(2) Provides other security such as an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(c) For loan amounts exceeding $50,000, or when the aggregate outstanding balance will exceed $50,000 or for loans in which the approving county or State committee determines, as a result of financial analysis, that additional security is required, a lien on the real estate parcel on which the farm storage facility is located is required in the form of a real estate mortgage, deed of trust, or other security instrument approved by USDA’s Office of the General Counsel, provided further that:

(1) CCC’s interest in the real estate must be superior to all other liens, except a loan may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders.

(2) A loan will be considered to be adequately secured when the real estate security for the loan is at least equal to the loan amount.

(3) If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA’s Office of the General Counsel. CCC will not require such an agreement from any agency of USDA.

(d) Title insurance or a title opinion is required for loans secured by real estate.

(e) Real estate liens, with prior CCC approval, may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage and the acreage is not subject to any other liens or mortgages that are superior to CCC’s lien interest and

(2) The acreage is of adequate size and value at the time of the application as determined by the county committee to adequately secure and insure repayment of the loan.

(f) A borrower, in lieu of such liens required by this section, may provide an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(g) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC’s security interest will include the remodeled addition as well as the existing storage structure.

(h) For all farm storage facility loans, except sugar loans, the borrower must pay the cost of loan closings by attorneys, title opinions, title insurance, title searches, filing, and recording all real estate liens, fixture filings, appraisals if requested by the borrower, and all subordinations. CCC will pay costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(i) All loans of $50,000 or less that are secured with collateral with no resale value, as determined by CCC, may require additional security.

(j) For sugar storage facility loans, in addition to other requirements in this section, additional security, including real estate, chattels, crops in storage,
§ 1436.9 Loan amount and loan application approvals.

(a) The cost on which the loan will be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel, -ton or -cubic foot cost established by the FSA State committee.

(b) The net cost for all storage facilities and handling equipment:

(1) May include the following: All real estate lien related fees paid by the borrower, including attorney fees, except for filing fees; environmental and historic review fees including archaeological study fees; the facility purchase price; sales tax; shipping; delivery charges; site preparation costs; installation cost; material and labor for concrete pads and foundations; material and labor for electrical wiring; electrical motors; off-farm paid labor; on-farm site preparation and construction equipment costs not to exceed commercial rates approved by the county committee; and new on-farm material approved by the county committee.

(2) May not include secondhand material or any other item determined by the approving authority to be ineligible for loan.

(c) The maximum total principal amount of the farm storage facility loan is 85 percent of the net cost of the applicant’s needed storage or handling facility, including equipment, not to exceed $500,000 per loan.

(d) The storage need requirement for eligible facility loan commodities will be determined as follows:

(1) For facility loan commodities, except sugar and fruits and vegetables:

(i) Multiply the average of the applicant’s share of the acres farmed for the most recent three years for each type of facility loan commodity requiring suitable storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Multiply by two (for 2 years production); and

(iv) Subtract existing storage capacity in the units of measurement, such as bushels, tons, or cubic feet, for the type of storage needed to determine remaining storage need.

(v) Compare capacity of proposed facility with storage need (calculated as specified in paragraphs (d)(1)(i)–(iv) of this section) to determine if applicant is eligible for additional storage.

(2) For sugar storage facility loans,

(i) Identify past processing volume and marketing allotments;

(ii) Use the processor’s projection of processing volume, available storage capacity, volume not to be marketed due to marketing allotment, and other appropriate factors affecting the processor’s storage need to estimate the storage need requirement, and

(iii) Compare capacity of proposed facility with storage need (estimated as specified in paragraphs (d)(2)(i)–(ii) of this section) to determine if additional storage is required.

(3) For cold storage facilities for fruits and vegetables:

(i) Multiply the average of the applicant’s share of the acres farmed for the most recent three years for each eligible fruit and vegetable commodity requiring cold storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Determine cold storage needed (calculated as specified in paragraphs
§ 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with §1436.9 will be made by the loan applicant to the supplier or contractor before either the partial or final loan disbursements.

(b) The down payment must be in cash unless some other form of payment is approved by CCC. The down payment may be obtained by the borrower from another lending source.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

§ 1436.11 Disbursements and assignments.

(a) At the request of the borrower, one partial disbursement of loan principal and one final loan disbursement will be available. The partial loan disbursement will be made to facilitate the purchase and construction of an eligible facility and will be made after the approved applicant has completed construction on part of the structure. County FSA personnel will inspect and verify the amount of construction completed.

(1) The amount of the partial loan disbursement will be determined by CCC and made after the borrower provides acceptable documentation for that portion of the completed construction to the County Committee.

(2) Security required for the amount of the partial loan disbursement will be required before the partial loan disbursement is finalized.
(3) The final disbursement of the loan by CCC will be made after the farm storage facility has been completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(4) All additional security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

(b) Both the partial and final loan disbursements will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan. If deemed appropriate by CCC, the partial and final disbursement may have separate notes and separate security instruments.

(c) Both the partial and final loan disbursement will be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower solely where CCC determines, based upon information made available to CCC by the borrower, that the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility and that all applicable liens, security interests, or other encumbrances have been released.

(d) A release of liability will be required from all contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

(f) For sugar storage facility loans, only one disbursement will be made and such disbursement will be regarded as a final disbursement.

[74 FR 41591, Aug. 18, 2009]

§ 1436.13 Loan installments, delinquency, and acceleration of maturity date.

(a) Equal installments of principal plus interest will be amortized over the loan term for purposes of setting a payment schedule. Installments are due and payable not later than the last day of each 12-month period of each of the partial and final loan disbursements, until the principal plus interest has been paid in full.

(b) Each installment may be paid in cash, money order, wire transfer, or by personal, certified, or cashier’s check. Each payment will be applied first to accrued interest and then to principal.

(c) When installments are not paid on the due date:

(1) CCC will generally mail a demand for payment to the debtor after the due date has passed.

(2) If the installment is not paid within 30 calendar days of the due date or if a new due date acceptable to CCC has not been established based on a financial plan submitted by the debtor, CCC may send two subsequent written demands at approximately 30 calendar day intervals unless CCC needs to take other action to protect the interests of CCC.

(3) If the debtor files an appeal according to §1436.18, CCC will generally cease collection action until the appeal process is complete, however, CCC may withhold any payments due the debtor and, depending on the outcome of the appeal, any payments due the debtor may later be offset and applied to reduce the indebtedness.

(4) In lieu of a foreclosure on the collateral or the land securing a loan in the case of a delinquency, CCC may permit a rescheduling of the debt or other measures consistent with the collection of other debts under the provisions of part 1403 of this chapter. Any
§ 1436.14 Taxes.

The borrower must pay, when due, all real and personal property taxes that may affect CCC's security interest in all collateral or land securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral or land securing a loan made in accordance with this part, and if CCC does so, the borrower will reimburse CCC for such payment, and if unpaid by the borrower, such debt will become due immediately.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]

§ 1436.15 Maintenance, liability, insurance, and inspections.

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities. For purpose of this section the term “loan collateral” will mean any property of any kind that was built or improved, or acquired using a loan made under this part.

(b) Until the loan has been repaid, the borrower will be liable for all damages to or destruction of the loan collateral. CCC will not assume any loss of the loan collateral.

(c) CCC may conduct annual collateral inspections to insure compliance with this part. The borrower must consent to such inspection as a term of the loan and failure to supply such access will put the borrower into default.

(d) Structures must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril structural insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC will have rights of ingress and egress where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made will constitute a loan default for which the remaining balance of the loan will become immediately due and payable.

(f) For sugar storage facility loans, in addition to the requirements of paragraph (d) of this section, sugar processors must also insure the contents of storage structures used as collateral for a sugar storage facility loan against all perils.

§ 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or bankruptcy.

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and payable under this part as follows:

(1) If a demand for payment is not received by the due date acceptable to CCC, CCC may call the loan and initiate foreclosure proceedings by issuing a liquidation letter to the borrower.

(2) The debtor may voluntarily agree to allow removal of the collateral to facilitate sale by signing an agreement for sale. If the debtor objects to removal of collateral, the law of the State where the collateral exists will be used to foreclose on the property.

(3) For loans with movable collateral and no real estate lien, CCC may sell the collateral for the best price obtainable. Sales proceeds will be distributed in the following order:

(i) To CCC to satisfy the debtor’s indebtedness including all costs associated with selling the collateral.

(ii) Payment to junior lien holders if approved by USDA’s Office of the General Counsel and then to the borrower or other persons as determined appropriate by that office.

(4) For loans with non-movable or non-salable collateral, as determined by CCC, and no real estate lien, CCC may establish a claim according to 7 CFR part 1403.

(5) For loans secured with a real estate lien, CCC may obtain an appraisal of the property. Sales proceeds will be distributed in the following order:

(i) To CCC to satisfy the debtor’s indebtedness including all costs associated with selling the collateral and the appraisal.

(ii) To junior lien holders if approved by USDA’s Office of the General Counsel; or

(iii) To the borrower or other persons as determined appropriate by that office.

(b) Assumption by another borrower of a farm storage facility loan is permitted subject to county committee approval and the subsequent borrower’s ability to show a satisfactory credit history. An assumption of the loan may be approved when the collateral is sold by CCC to an otherwise eligible borrower, the current borrower will convey the collateral or property securing the loan to another eligible borrower, or the borrower is dead, incompetent, or missing and an eligible borrower wants to assume the loan.

(1) Requests for approval of assumptions must be made to the county committee by the borrower, the borrower’s successors, or representatives of the borrower. If approval is granted, the borrower’s successors or representatives must execute a new farm storage facility note and security agreement for the balance of the term of the loan.

(2) The principal amount of the loan will include the unpaid amount of the loan, interest computed to the date of assumption, all past due installments, and any other charges that may be required.

(c) The borrower may voluntarily convey the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower must obtain approval for the sale or conveyance from the FSA county committee with the understanding that sale proceeds must be paid to satisfy the borrower’s indebtedness to CCC.

(d) If any significant changes are made to the legal or operating status of the farming operation with an outstanding Farm Storage Facility Loan, the borrower must do one of the following:

(1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,

(2) Repay the loan, or

(3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC’s interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

(e) Remedies provided for in this section will, unless CCC determines otherwise, be subject to the administrative appeals provided for elsewhere in this part, including those that are found at § 1436.13.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]
§ 1436.17 Environmental compliance.

(a) Except as otherwise specified in this section, prior to approval of any farm storage facility loan, an environmental evaluation will be completed to determine if the proposed action will have any adverse impacts on the environment and cultural resources.

(b) If it is determined that a proposed action or group of proposed actions will not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508.

(c)(1) If adverse environmental impacts (either direct or indirect) are identified, an environmental assessment will be completed in accordance with the Council on Environmental Quality’s Regulations for Implementing the Procedural Provisions of NEPA.

(2) The environmental assessment will be used to develop an action that results in no significant environmental impact on the human environment or cultural resources.

(3) No action will be approved that has been determined to have significant impacts on the human environment or cultural resources.

(d)(1) In order to minimize the exposure to environmental liabilities from the presence of contamination on real estate collateral, an evaluation will be made of the economic and environmental risks to the real estate collateral posed by the presence of hazardous substances and petroleum products.

(2) If the evaluation made under paragraph (d)(1) of this section reveals that the collateral is or may be contaminated, then the applicant will be notified and given an option of offering as collateral other real estate that is free from contamination or remediating the contamination on the original site offered as collateral.

§ 1436.18 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except for provisions for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with parts 11 and 780 of this title.

§ 1436.19 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan will 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. FSFL borrowers are subject to the non-discrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or age, provided the applicant can execute a legal contract. FSFL is subject to the non-discrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e. Nor will CCC 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.


PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.
1437.1 Applicability.
1437.2 Administration.
1437.3 Definitions.
1437.4 Eligibility.
1437.5 Coverage period.
1437.6 Application for coverage and service fee.
1437.7 Records.
1437.8 Unit division.
1437.9 Causes of loss.
1437.10 Notice of loss, appraisal requirements, and application for payment.
1437.11 Average market price and payment factors.
1437.12 Crop definition.
Commodity Credit Corporation, USDA

§ 1437.13 Multiple benefits.
§ 1437.14 Payment and income limitations.
§ 1437.15 Miscellaneous provisions.

Subpart B—Determining Yield Coverage Using Actual Production History

§ 1437.101 Actual production history.
§ 1437.102 Yield determinations.
§ 1437.103 Late-planted acreage.
§ 1437.104 Assigned production.
§ 1437.105 Determining payments for low yield.
§ 1437.106 Honey.
§ 1437.107 Maple sap.
§ 1437.108–1437.200 [Reserved]

Subpart C—Determining Coverage for Prevented Planted Acreage

§ 1437.201 Prevented planting acreage.
§ 1437.202 Determining payments for prevented planting.
§ 1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

§ 1437.301 Value loss.
§ 1437.302 Determining payments.
§ 1437.303 Aquaculture, including ornamental fish.
§ 1437.304 Floriculture.
§ 1437.305 Ornamental nursery.
§ 1437.306 Christmas tree crops.
§ 1437.307 Mushrooms.
§ 1437.308 Ginseng.
§ 1437.309 Turfgrass sod.
§ 1437.310 Sea grass and sea oats.
§ 1437.311–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

§ 1437.401 Forage.
§ 1437.402 Carrying capacity.
§ 1437.403 Determining payments.
§ 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

Subpart F—Determining Coverage in the Tropical Region

§ 1437.501 Applicability; definition of “tropical region” and additional definitions
§ 1437.502 Coverage periods and fees for covered tropical crops.
§ 1437.503 Covered losses and recordkeeping requirements for covered tropical crops.
§ 1437.504 Notice of loss for covered tropical crops.
§ 1437.505 Application for payment for the tropical region.


Source: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.
(d) No provision or delegation to a State or county committee shall preclude the Executive Vice-President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines (except statutory deadlines) in cases where lateness to file does not adversely affect operation of the program.

(f) Items including, but not limited to, application periods, coverage periods, application deadlines, fees, prices, yields, and payment factors established for NAP in accordance with this part that are used for similarly situated participants and eligible crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

§ 1437.3 Definitions.

The definitions and program parameters set out in this section shall be applicable for all purposes of administering the Noninsured Crop Disaster Assistance Program provided for in this part. Although the terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, the definitions set forth in this section shall govern for all purposes of administering the Program.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

Animal Unit Days (AUD) means an expression of expected or actual stocking rate for pasture or forage.

Application Closing Date means the last date, as determined by CCC, producers can submit an application for coverage for noninsured crops for the specified crop year.

Catastrophic coverage means a catastrophic risk protection (CAT) level of crop insurance available in accordance with section 508(b) of the Federal Crop Insurance Act, as amended.

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 practically 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 year means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Fiber means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by CCC.

Final planting date means the date which marks the end of the planting period for the crop and in particular the last day, as determined by CCC, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

Food means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by CCC.

Good farming practices means the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. These practices are normally those recognized by the National Institute of Food and Agriculture as compatible with agro-nomic and weather conditions.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance.
Commodity Credit Corporation, USDA § 1437.4

or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

Industrial crop means a commercial crop, or other agricultural commodity utilized in manufacturing. Industrial crops include caster beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame and other crops specifically designated by CCC.

Intended Use means for a crop or a commodity, the end use for which it is grown and produced.

Multiple planted means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by CCC.

Native sod means land on which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and that has not been tilled for the production of an annual crop as of June 18, 2006.

Normal harvest date means the date harvest of the crop is normally completed in the administrative county, as determined by CCC.

Seed crop means propagation stock commercially produced for sale as seed stock for eligible crops.

Seeded forage means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

T-Yield means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

Transitional yield means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.


§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available for loss of production or prevented planting of eligible commercial crops or other agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by CCC, and is considered timely planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by CCC, may be planted and remain eligible for reduced NAP coverage; and

(4) Determined by CCC to be eligible crops:

(i) For which catastrophic coverage is not available; or

(ii) For specific perils not included under available catastrophic coverage.

(b) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their byproducts;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops; except for the 2001 and preceding crop years assistance for forage produced on Federal- and State-owned lands is available only for seeded forage.

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Industrial crops;

(vii) Seed crops, including propagation stock such as non-ornamental...
§ 1437.5 Coverage period.

(a) The coverage period is the time during which coverage is available against loss of production of the eligible crop as a result of natural disaster.

(b) The coverage period for annual crops, including annual forage crops, begins the later of 30 calendar days after the date the application for coverage is filed; or the date the crop is planted, not to exceed the late planting period; and ends on the earlier of the date harvest is complete; the normal harvest date of the crop in the area; the date the crop is abandoned; or the date the crop is destroyed.

(c) Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins 30 calendar days after the application closing date; and ends as determined by CCC.

(d) Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including floriculture and mushrooms begins 30 calendar days after the application closing date; and ends the last day of the crop year, as determined by CCC.

(e) The coverage period for honey begins 30 calendar days after the application closing date and ends the last day of the crop year, as determined by CCC.

(f) The coverage period for maple sap begins 30 calendar days after the application closing date and ends the last day of the crop year, as determined by CCC.

(g) Except as otherwise specified in this part, the coverage period for seedlings, sets, cuttings, rootstock, and others, as determined by CCC; and sea grass and sea oats.

(c) Except as specified in paragraph (d) of this section, the Governor of a State in the Prairie Pothole National Priority Area (Iowa, Minnesota, Montana, North Dakota, and South Dakota) may specify that native sod acreage that is tilled for the production of an annual crop will be ineligible for NAP benefits during the first 5 crop years of planting.

(d) If the producer's total native sod acreage is 5 acres or less, the eligibility restrictions for native sod specified in paragraph (c) of this section will not apply.

(e) Wheat, barley, oats, or triticale crop acreage subject to an application for grazing payments under the program specified in part 1421, subpart D of this chapter, or successor program, is ineligible for NAP payments.

§ 1437.6 Application for coverage and service fee.

(a) With respect to each crop, commodity, or acreage, producers must file an application for coverage under this part in the administrative county FSA office no later than the application closing date.

(b) The service fee must be paid at the time of the application. The service fee is $250 per crop per administrative county, up to $750 per producer per administrative county, but not to exceed $1875 per producer.

(c) The service fee will be applied per administrative county by crop definition and planting period, as determined by CCC.

(d) Limited resource farmers may request that the service fee be waived and must request such a waiver prior to, or at the same time the application for coverage is filed. For this purpose, a “limited resource farmer” shall be given the meaning assigned by 7 CFR 457.8.

§ 1437.7 Records.

(a) Producers must maintain records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with §1437.5. For those crops
or commodities for which it is impractical, as determined by CCC, to maintain crop acreage, yields or production, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D and E, of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with §1437.6. Producers may be selected on a random or targeted basis and be required to provide records acceptable to CCC to support the certification provided. For each harvested crop for which producers file an application for payment in accordance with §1437.10, producers must provide documentary evidence acceptable to CCC of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year. Records of a previous crop year’s production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by CCC. Records of production acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC.

(b) During any crop year that a notice of loss is filed according to this part:

(1) Producers of hand-harvested crops shall, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made before deterioration or destruction of the crop residue and within 15 days after harvest is completed. If an appraisal of the crop acreage is determined necessary by CCC, the producer shall not destroy the crop residue until the crop acreage is released by an FCIC- or CCC-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or CCC loss adjusters of hand-harvested crop acreage be completed during non-loss crop years in order to maintain accurate actual production history.

(2) Producers shall not allow the gathering (gleaning) of any produce left in the field following normal harvest of the crop acreage until the crop acreage is released by a qualified CCC or FCIC loss adjustor, as determined by CCC. Except, crop acreage may be released by an authorized CCC representative for acceptable gleaning operations, as determined by CCC, when producers and gleaners agree to provide acceptable records, as determined by CCC, of the quantity of the crop gleaned.

(c) Producers must provide verifiable evidence, as determined by CCC, of:

(1) An interest in the commodity produced or control of the crop acreage on which the commodity was grown at the time of disaster; and

(2) The authority of the applicable individual to execute program documents.

(d) Reports of acreage planted or intended but prevented from being planted must be provided to CCC at the administrative FSA office for the acreage no later than the date specified by CCC for each crop and location. Reports of acreage filed beyond the date specified by CCC for the crop and location may, however, be considered timely filed if all the provisions of 7 CFR 718.103 are
§ 1437.8 Unit definition.

(a) The unit identifies the interest of the producer in the administrative county on the basis of the unique relationship of the owner to one or more operators. The unit is the foundation for all determinations of acreage, production, value, AUD, approved yields, requisite losses, payments, and other program requirements.

(b) Separate and distinct units are:

(1) One-hundred percent interest as owner/operator;

(2) Less than one-hundred percent interest as owner or operator; or

(3) Less than one-hundred percent interest, as owner or operator in an inverse relationship.

§ 1437.9 Causes of loss.

(a) To be eligible for benefits under this part, an eligible cause of loss must result in:

(1) A loss of production greater than 50 percent of the approved yield in accordance with subpart B of this part;

(2) Prevented planting of greater than 35 percent of the intended crop acreage according to subpart C of this part;

(3) A value loss of greater than 50 percent of the pre-disaster value according to subpart D of this part, or

(4) An AUD loss of greater than 50 percent of the expected AUD according to subpart E of this part.

(b) The quantity of the crop or commodity will not be reduced for any quality consideration unless a zero value is established.

(c) Eligible causes of loss include:

(1) Damaging weather occurring before or during harvest, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;
Commodity Credit Corporation, USDA § 1437.10

(2) Adverse natural occurrence before or during harvest, such as earthquake, flood, or volcanic eruption; and

(3) A related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring before or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by CCC.

(d) Due to the unique requirements, such as controlled environments, necessary for successful production of some crops and commodities; not all eligible causes of loss will apply to all crops and commodities.

(e) Ineligible causes of loss include but are not limited to:

(1) Negligence or malfeasance of the producer;

(2) Failure of the producer to reseed to the same crop during the same planting period in those areas and under such circumstances where it is customary;

(3) Failure of the producer to follow good farming practices, as determined by CCC;

(4) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Except for tree crops and perennials and as provided for in §1437.201, inadequate irrigation resources at time of planting;

(7) Except as specified in §1437.303, a loss of inventory or yield of aquaculture (including ornamental fish), floriculture or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason; or

(8) Any failure to provide a controlled environment or exercise good nursery practices when such controlled environment or practices are a condition of eligibility under this part.

§1437.10 Notice of loss, appraisal requirements, and application for payment.

(a) When an eligible crop is damaged by an eligible cause of loss, at least one producer having a share in the unit must provide a notice of loss to CCC in the administrative FSA county office for the unit, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural occurrence, or date loss of the crop or commodity becomes apparent for low yield claims; and

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, e.g. prevented planting or low yield;

(7) Practices employed to grow the crop, e.g. irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, etc.; and

(iv) What and when land preparation measures, e.g. cultivation, etc. were completed and indicate what has been done or will be done with the acreage, e.g. abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;
(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, e.g., cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, e.g., harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Producers who file a notice of loss, using the appropriate CCC form, for crop acreage that will not be harvested as intended, such as abandoned, put to another use, replanted to the same or a different crop, or in the case of forage, acreage intended to be mechanically harvested that will be both mechanically harvested and grazed, must:

(1) Not put the crop to another use or prepare the acreage for replanting or otherwise change any conditions of the crop or acreage until written notification of release of the crop or acreage is received from CCC;

(2) Request, using the appropriate FSA form, an appraisal of the un-harvested acreage for potential production and release of the crop or acreage:

(i) No less than 15 calendar days before replanting or in the case of forage intended to be mechanically harvested, grazing of the crop acreage.

(ii) Within 15 calendar days after the acreage is abandoned, for example, discontinued care for the crop or provided care so insignificant as to provide no benefit to the crop, as determined by CCC.

(iii) No later than the normal harvest date of the crop, as determined by CCC.

(3) Request the loss adjustor on the day the initial appraisal is completed, or request in any manner of written correspondence received in the FSA administrative county office no later than 15 calendar days after the request for initial appraisal is submitted, that the appraisal be deferred until the end of the growing season, the producer be permitted to establish representative sample areas according to paragraph (d)(4) of this section, and that the acreage be released immediately when:

(i) Time is critical for replanting, or other urgent reasons; and

(ii) Producers and loss adjustors cannot resolve disagreement with the initial appraisal of the acreage to be released.

(4) Establish representative sample areas of the acreage according to the loss adjustor’s instructions received on the day the initial appraisal is completed or, if the loss adjustor is not available, according to the FCIC Loss Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the FSA administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted. Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by CCC, until released by CCC.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor’s appraisal. Producers unable to be present for the appraisal may contest the results of the appraisal in the FSA administrative county office.

(e) For the 2005 and subsequent crop years, crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide CCC acceptable evidence of a contract to produce seed
Commodity Credit Corporation, USDA

§ 1437.11 Average market price and payment factors.

(a) An average market price will be used to calculate assistance under this part and will be:

1) A dollar value per the applicable unit of measure of the eligible crop;
2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by CCC;
3) Comparable with established FCIC prices; and
4) Determined, as practicable, for each intended use of a crop type within a State, as determined by CCC, for a crop year.

(b) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(c) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted or planted but not harvested, as determined by CCC.

(d) An adjusted market price will be calculated based on the provisions in this section and others as may apply. A final payment price will be determined by multiplying the average market price by the applicable payment factor (i.e., harvested, unharvested, or prevented planting) by 55 percent or, by multiplying the applicable AUD (as adjusted, if adjusted) by 55 percent.

§ 1437.12 Crop definition.

(a) For the purpose of providing benefits under this part, CCC will, at its discretion, define crops as specified in this section.

(b) CCC may separate or combine types and varieties as a crop when specific credible information as determined by CCC is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by CCC.

(c) CCC may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC, and all crops are recognized by CCC as able to achieve the expected yield, as determined by CCC.

(d) CCC may consider crop acreage that is harvested more than once during the same crop year as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(e) CCC may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(f) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.
as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by CCC, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

§ 1437.13 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits specified in paragraph (a) of this section will not apply to:


(2) Supplemental Revenue Assistance Payments Program (SURE) payments as specified in part 760 of this title.

(3) Livestock Forage Disaster Program (LFP) payments as specified in part 760 of this title.

(4) Tree Assistance Program (TAP) payments as specified in part 760 of this title, or

(5) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) payments as specified in part 760 of this title.

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21018, Apr. 9, 2013]

§ 1437.14 Payment and income limitations.

(a) The provisions of part 1400 of this title apply to NAP.

(b) For the 2008 and earlier crop years for which NAP was authorized, NAP payments will not be made to a person who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the year for which assistance is requested. Qualifying gross revenue means:

(1) With respect to a person who receives more than 50 percent of such person’s gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person’s gross income from farming, ranching, and forestry operations, the person’s total gross income for the taxable year from all sources.

(c) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer’s failure to provide information or other material
Commodity Credit Corporation, USDA


§ 1437.102

necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

(67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013)

§ 1437.15 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of § 718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, shall apply.

(c) A person shall be ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3301(e), the Secretary hereby 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 to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

Subpart B—Determining Yield Coverage Using Actual Production History

§ 1437.101 Actual production history.

Actual production history (APH) is the unit’s record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing non-insured crop disaster assistance.

(71 FR 13744, Mar. 17, 2006)

§ 1437.102 Yield determinations.

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield): (1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the county for the five consecutive crop
years immediately preceding the previous crop year. For example, for the 2005 crop year, the five consecutive crop years immediately preceding the previous crop year would be 1999 through 2003.

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(4) Will be based on the most representative available historical information, as determined by CCC, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; National Institute of Food and Agriculture records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated, non-irrigated, and organic practices; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will, for all land for those producers who have land physically located in multiple counties and administered in one county office, be based on the administrative county’s expected yield for the crop.

(7) May be reduced, on a specific APH basis, when, as determined by CCC, it does not accurately reflect the productive capability of specific crop acreage.

(8) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production history base period when the producer reports acreage for the crop but fails to certify a report of production. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with §1437.7.

(4) May not be used if the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If CCC determines the documentation is inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and CCC approves such recommendation.

(d) A zero-credited yield:

(1) Will be used in the applicable crop year of the actual production history base period for each crop year following the crop year containing an assigned yield, for which producers do not certify a report of acreage or production, as determined by CCC.

(2) May be replaced with an actual yield when the producer provides a certification of production and acceptable production records for the applicable crop year in accordance with §1437.7.
Commodity Credit Corporation, USDA § 1437.102

(e) An approved yield:

(1) Is used in the calculation of the requisite loss and payment.

(2) Is a simple average of a minimum of four base period crop year yields, i.e., actual yield, T-yield, assigned yield, or zero-credited yield. The base period is 10 crop years, except 5 crop years for apples and peaches, immediately preceding the crop year for which an approved yield is calculated, not including any crop year the crop was out of rotation, not planted, or prevented from being planted.

(3) Shall be calculated according to the following criteria when the producer does not have at least four consecutive crop years of actual, assigned, or zero credited yields beginning with the most recent crop year.

(i) If there are no certified acceptable production records of actual production for the most recent crop year, or zero credited or assigned yields in the producer’s APH base period, and no formula provided for the producer under paragraphs (e)(3)(i) through (iv) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the applicable T-yield for each of the minimum four APH crop years.

(ii) If certified acceptable production records of actual production are available for only the most recent crop year and there are no zero credited or assigned yields in the producer’s APH base period, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-yield for the remaining three of the minimum four APH crop years.

(iii) If certified acceptable production records of actual production are available for only the two most recent crop years and there are no zero credited or assigned yields in the producer’s APH base period, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the remaining two of the minimum four APH crop years.

(iv) If certified acceptable production records of actual production are available for only the three most recent crop years and there are no zero credited or assigned yields in the producer’s APH base period, the approved yield for the current crop year will be calculated on the simple average of the three actual yields plus 100 percent of the applicable T-yield for the remaining crop year of the minimum four APH crop years.

(f) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by CCC, producers may request CCC replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(g) If approved yields were calculated for any of the 1995 through 2000 crop years, and subsequently in that period production was not certified, producers may request CCC replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(h) If producers add land in the farming operation and do not have available production records for the added land CCC will calculate an approved yield for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than 50 percent of the initial approved yield for the crop year and unit acreage has increased by more than 75 percent of the historical average acreage, CCC may adjust the approved yield, as determined by CCC.

(i) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by CCC,
§ 1437.103 Late-planted acreage.

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined by CCC, may be eligible for reduced coverage.

(b) Multiple-planted crops, crops with a growing period of 60 calendar days or less, value-loss crops, and fall season small grain crops intended only for grain are not eligible for reduced coverage under late planting provisions.

(c) For crops with a growing period of:

(1) 61 to 120 calendar days and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to twenty calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage plus an additional one percent of the applicable late-planted crop acreage for each day beyond five days.

(iii) 21 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer’s expected production of the applicable late-planted crop acreage.

(2) 121 days and up and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to 25 days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage plus an additional one percent of the applicable late-planted crop acreage for each day beyond five days.

(iii) 26 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer’s expected production of the applicable late-planted crop acreage.

§ 1437.104 Assigned production.

(a) When determining losses under this section, assigned production will be used to offset the loss of production when, as determined by CCC, any of the following has occurred:

(1) The loss is a result of an ineligible cause of loss and the loss has not been otherwise accounted for.

(2) The unit acreage was destroyed without consent notwithstanding §1437.10(d).

(3) The producer has a contract to receive a guaranteed payment for all or a portion of the production, as opposed to or regardless of delivery of such production.

(4) The crop is planted after the STC-established final planting date according to §1437.103.

(5) Irrigation equipment is not capable of supplying adequate water to sustain the expected production of a normal irrigated crop.

(6) For normal irrigated annual, biennial, and perennial crops, the irrigation practice is not used.

(7) For normal irrigated annual and biennial crops, the supply of available water at the beginning of the crop year is not adequate.

(8) For normal irrigated perennial crops, the supply of available water at the beginning of the crop year is not adequate as a result of an ineligible cause of loss.
§ 1437.105 Determining payments for low yield.

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part shall be made on eligible crops with eligible losses by:

(1) Multiplying the total eligible acreage planted to the eligible crop by the producers share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent of the approved yield per acre for the commodity for the producer;

(3) Multiplying the net production of the total eligible acreage by the producer's share;

(4) Subtracting the product of paragraph (a)(3) of this section from the product of paragraph (a)(2) of this section;

(5) Multiplying the difference calculated under paragraph (a)(4) of this section by the final payment price calculated under § 1437.11; and

(6) Adding the producer's share of any salvage value and secondary use and subtracting the result from the result of paragraph (a)(5) of this section.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

§ 1437.106 Honey.

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with §1437.7, honey producers must provide a record of colonies to CCC. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies shall include:

(1) The address of the producer’s headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit shall consist of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the honey operation. Producers must complete the following actions only in the control office:

(1) File an application for coverage;

(2) File a report of colonies;

(3) Report total unit production; and

(4) Request to change a unit’s control office.

(g) Actions that may be taken in any Administrative FSA office includes:

(1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with § 1437.10.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

(1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§ 1437.107 Maple sap.

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

(1) Are located on land the producer controls by ownership or lease;
(2) Are managed for production of maple sap;
(3) Are at least 30 years old and 12 inches in diameter; and
(4) Have a maximum of 4 taps per tree according to the tree’s diameter.

(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with §1437.6, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to CCC no later than the beginning of the crop year.

(d) In addition to the applicable records required under §1437.7, producers must report the:

- (1) Total number of eligible trees on the unit;
- (2) Average size and age of producing trees; and
- (3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap shall be 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by CCC, is available to CCC to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup shall be multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap shall be recorded on the basis of gallons of sap per tap.

(h) The unit’s expected production is determined by:

- (1) Multiplying the number of taps placed in eligible trees; by
- (2) The approved per tap yield as determined in accordance with §1437.102.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§ 1437.202 Determining payments for prevented planting.

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment

7 CFR Ch. XIV (1–1–14 Edition)
for prevented planting will be determined by:
(1) Adding the total planted and prevented-planted acres;
(2) Multiplying the sum of paragraph (a)(1) of this section by .35;
(3) Subtracting the product of paragraph (a)(2) of this section from the total prevented planted acres;
(4) Multiplying the producer’s share by the approved yield by the positive result of paragraph (a)(3) of this section;
(5) Multiplying the producer’s share by the assigned production;
(6) Subtracting the product of paragraph (a)(5) of this section from the product of paragraph (a)(4) of this section; and
(7) Multiplying the result of paragraph (a)(6) of this section by the final payment price calculated under §1437.11.
(b) Yields for purposes of paragraph (a) of this section shall be calculated in the same manner as for low-yield claims.


§§ 1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

§ 1437.301 Value loss.
(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities which do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. The agency shall determine which crops shall be treated as value-loss crops, but unless otherwise announced, such crops shall be limited to those identified in §§1437.303 through 1437.309 as value loss crops. Lost productions of value loss crops shall be compensable only under this subpart.
(b) The crop year for all value loss crops, except ornamental nursery as specified in §1437.305, is October 1 through September 30.
(c) Producers must file an application for coverage in accordance with §1437.6, and must:

(1) Provide a report of the crop, commodity, and facility to CCC for the acreage or facility, in a form prescribed by CCC, no later than the beginning of the crop year.
(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and
(3) Provide an accurate accounting of the inventory, as required by CCC.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013]

§ 1437.302 Determining payments.
Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:
(a) Multiplying the field market value of the crop before the disaster by 50 percent;
(b) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a) of this section;
(c) Multiplying the result from paragraph (b) of this section by the producer’s share;
(d) Multiplying the result from paragraph (c) of this section by 55 percent plus whatever factor deemed appropriate to reflect savings from non-harvesting of the damaged crop or other factors as appropriate;
(e) Subtracting the result from paragraph (d) of this section from the producer’s share of any salvage value, if applicable.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013]

§ 1437.303 Aquaculture, including ornamental fish.
(a) Aquaculture is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible aquacultural species shall only include:
(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.
(2) Fish raised as feed for other fish that are consumed by humans; and
(3) Ornamental fish propagated and reared in an aquatic medium.
(b) The aquacultural facility must be:
(1) A commercial enterprise on private property;
§ 1437.304 Floriculture.

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible floriculture shall be limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by CCC; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by CCC.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under “value loss” rules, but under the rules for normal production low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value shall be counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted shall be counted as worth full value.

§ 1437.305 Ornamental nursery.

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention,
Commodity Credit Corporation, USDA § 1437.308

Growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as an ornamental plant, shall be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ornamental nursery is maintained in accordance with this section.

(g) For the 2010 and subsequent crops, the crop year for ornamental nursery is June 1 through May 31.

§ 1437.306 Christmas tree crops.

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, shall be considered as worth full value based on the age of the tree at the time of disaster.

§ 1437.307 Mushrooms.

(a) Eligible mushrooms is a value loss crop and is only compensable in accord with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

(1) Temperature and humidity controls;

(2) Proper and adequate lighting; and

(3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

(1) Adequate hygiene;

(2) Overall cleanliness;

(3) Isolation or minimum contact procedures;

(4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the mushrooms are maintained in accordance with this section.

§ 1437.308 Ginseng.

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer.

(b) Ginseng will not be eligible to generate benefits under this part if it:

(1) Is indigenous to the facility;

(2) Is grown solely for medicinal purposes; and

(3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

(1) Adequate drainage;

(2) Proper and adequate shade;

(3) Accurate pH level;

(4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;
§ 1437.309
(5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and
(6) Disease control.
(d) Ginseng producers must:
(1) Provide a report of inventory of all ginseng, as determined by CCC;
(2) Provide production and sales records necessary to determine the value of eligible ginseng;
(3) Allow a CCC-certified loss adjustor to verify loss, including physically removing representative samples;
(4) Maintain and provide, as determined by CCC, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and
(5) Possess a valid food processing license issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.
(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ginseng was produced in accordance with this section.

§ 1437.309 Turfgrass sod.
(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.
(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.
(c) The unit of measure for all turfgrass sod shall be a square yard.
(d) Turfgrass sod having any value shall be considered as worth full value.
(e) In addition to the records required in §1437.7, producers seeking payment must provide information to CCC regarding the average number of square yards per acre and all unharvested areas.

§ 1437.310 Sea grass and sea oats.
(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.
(b) An eligible commodity under this section intended for sale on a commercial basis as:
(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under §1437.305 and such claims shall not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under §1437.305.
(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.
(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:
(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with §1437.11.
(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with §1437.11.
(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by CCC.
(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:
(1) Be owned or leased by the producer;
(2) Have readily identifiable boundaries; and
(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by CCC.
(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:
(1) Flood prevention;
(2) Growing medium;
(3) Fertilization or feeding;
(4) Irrigation and water quality;
(5) Weed control;
(6) Pest and disease control; and
(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by CCC; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster shall be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, shall be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

§§ 1437.311–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

§ 1437.401 Forage.

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by CCC, produced in a commercial operation in three or more of the last five crop years, except producers who have not produced forage for the minimum period in order to preserve vegetation and prevent erosion, or otherwise mitigate the impact of disaster conditions, as determined by CCC, shall not be penalized. Benefits are not available for first-year seeding of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by CCC. The commercial operation must use acceptable farming, pasture and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under §1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart, however, shall govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in §1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to CCC as intended to be mechanically harvested, but which is, instead, subsequently grazed, will be considered, for crop definition purposes, as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity. The loss of such grazed forage shall be determined according to paragraph (f) of this section. Except, beginning with the 2005 crop year, for acreage intended to be mechanically harvested which is instead, subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested, but instead grazed, shall be deemed to be un-harvested for the purposes of determining a payment factor.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in §1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as,
water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed, on the basis of:

(1) The percentages of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss, or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area, the collective percentage of loss as determined by CCC for the geographical region after consideration of at least two independent assessments of grazed forage acreage conditions. The assessments shall be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Neither the assessments themselves, nor collective loss percentages established pursuant thereto are subject to appeal. CCC’s determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.


§ 1437.402 Carrying capacity.

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage’s carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage’s carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

§ 1437.403 Determining payments.

Subject to payment limits, availability of funds, and other limits as may apply, payments for losses of forage reported to FSA as intended to be grazed will be determined by:

(a) Multiplying the eligible acreage by the producer’s share;

(b) Dividing the result from paragraph (a) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific acreage, as determined by CCC;

(c) Multiplying the result from paragraph (b) of this section by the number of days established as the grazing period;

(d) Adding adjustments of AUD for practices and production to the product of paragraph (c) of this section;

(e) Multiplying the result from paragraph (d) of this section by the applicable percentage of loss established by CCC;

(f) Multiplying the amount of assigned AUD, as determined by CCC, by the producer’s share;
Commodity Credit Corporation, USDA

§ 1437.502 Coverage periods and fees for covered tropical crops.

(a) The crop year for all covered tropical crops is the calendar year (January 1 through December 31 beginning in 2006 through subsequent years).

(b) The application closing date for all covered tropical crops is December 1 of the calendar year before the applicable crop year.

(c) For covered tropical crops, per county per crop year, a maximum service fee of $250 is required of the producer for coverage of:

(1) With respect to annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by CCC.

(2) With respect to perennial crops, all acreage of the crop existing during the crop year, as determined by CCC.

(d) Multiple planting periods and final planting dates are not applicable for covered tropical crops. However, nothing in this section shall prohibit...
assigning different production expectations to different fields.

(2) The coverage period for perennial and other crops covered by this subpart begins on January 1 of the relevant crop year and ends on December 31 of that year.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013]

§ 1437.503 Covered losses and record-keeping requirements for covered tropical crops.

(a) Prevented planting coverage is not available for covered tropical crops, other than in Hawaii, Puerto Rico, and other areas approved by the Deputy Administrator, except as approved by the Deputy Administrator in special cases.

(b) Except in Hawaii, Puerto Rico, and other areas approved by the Deputy Administrator in individual cases, eligible causes of loss for covered tropical crops will only include hurricanes, typhoons, and named tropical storms.

(c) Producers who have applied for coverage on covered tropical crops must maintain for the full coverage period contemporaneous records. Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed. In this regard:

(1) Producers may be selected on a random or targeted basis for compliance review with this requirement and any other requirements that may apply to this program.

(2) A failure to maintain acceptable contemporaneous records throughout the crop year may be treated by CCC as grounds of ineligibility for benefits under this part.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013]

§ 1437.504 Notice of loss for covered tropical crops.

(a) The provisions of §1437.10(c) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to §1437.10, producers must provide records maintained according to §1437.503(c) of the:

(1) Number of acres or other basis of measurement, as applicable, of the crop from which production could be achieved existing on the day the eligible natural disaster occurred or, for prolonged natural disasters, such as a drought and similar damage where applicable, existing on the day the notice of loss is filed.

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop plantings (damaged or undamaged) which were in existence on the farm at the time of the disaster including production from the covered plantings (in existence at the time of the loss event) that may occur after the loss event even when, to the extent provided for in paragraph (c) of this section, the harvest occurs after the end of the crop year. Crop acreage of the covered crop that is in existence at the time of the loss event that can be harvested after the eligible natural disaster must be harvested, or continue to be harvested, and the harvested acres and production reported to FSA according to this subpart, except that for perennial crops the requirement ends with the end of the crop year. For non-perennial crops the obligation to harvest ends with the end of the life-cycle for the plantings that were in existence at the time of the loss event. In this regard:

(i) Except as otherwise determined by FSA, such production, before or after the loss event, will be taken into account in computing eligibilities.

(ii) Production that must be reported under paragraph (b)(2)(i) of this section includes, except in the case of perennial plants, all production irrespective of whether the production occurs in the same crop year.

(iii) For perennial plants, only production in the same crop year must be reported.

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at the

748
time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

(3) Failure to keep sufficient records to allow the computations provided for in this subpart is grounds for denial of the claim.

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

(1) Collective acres of the crop acreage planted or in the ground during the crop year.

(2) Total production harvested from the crop acreage for the full crop year in the case of a perennial plant and for the full life of the plants for other crops.

(d) With respect to the report required in paragraph (c) of this section:

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 calendar days from the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, an appropriate crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be destroyed until authorized by CCC.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013]

§1437.505 Application for payment for the tropical region.

(a) For producers of covered tropical crops, except as specified in paragraph (b) of this section or approved in individual cases by the Deputy Administrator, an application for payment must be filed at the same time as the filing of the notice of loss required under §§1437.10 and 1437.504.

(b) For producers in Puerto Rico, Hawaii, Guam, American Samoa, and the Northern Mariana Islands, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§1437.10 and 1437.504, or

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

[78 FR 21019, Apr. 9, 2013]

PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

Subpart A—Common Provisions

Sec.
1450.1 Administration.
1450.2 Definitions.
1450.3 General.
1450.4 Violations.
1450.5 Performance based on advice or action of USDA.
1450.6 Access to land.
1450.7 Division of payments and provisions about tenants and sharecroppers.
1450.8 Payments not subject to claims.
1450.9 Assignments.
(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

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

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

(d) No delegation of authority to a State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

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

(f) Subject to the availability of funds and all other eligibility provisions of this part, this part provides the terms, conditions and requirements of BCAP. In the event that CCC determines that available funds are insufficient to accommodate the demand for establishment and annual payments as well as all potential applications for matching payments for collection, harvest, storage, and transportation of eligible material, without any advance notice other than that stated here, CCC may prioritize the expenditure of program funds in favor of funding for the selection of BCAP project areas and the establishment and annual payments related to those project areas, and may make such other priorities in approvals that will, in the determination of the Deputy Administrator, advance the purposes of BCAP.


Source: 75 FR 66234, Oct. 27, 2010, unless otherwise noted.

Subpart A—Common Provisions

§ 1450.1 Administration.

(a) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), or a designee. In the field, the regulations in this part will be implemented by the Farm Service Agency (FSA) State and county committees (“State committees” and “county committees,” respectively). (b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the FSA Deputy Administrator for Farm Program (Deputy Administrator).

7 CFR Ch. XIV (1–1–14 Edition)
Commodity Credit Corporation, USDA  § 1450.2

Advanced biofuel means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and other fuel derived from cellulosic biomass.

Agricultural land means cropland, grassland, pastureland, rangeland, hayland, and other land on which food, fiber, or other agricultural products are produced or capable of being produced.

Animal waste means the organic animal waste of animal operations such as confined beef or dairy, poultry, or swine operations including manure, contaminated runoff, milking house waste, dead poultry, bedding, and spilled feed. Depending on the poultry system, animal waste can also include litter, wash-flush water, and waste feed.

Annual payment means the annual payment specified in the BCAP contract for BCAP project areas that is issued to a participant for placing eligible land in BCAP.

Beginning farmer or rancher means, as determined by CCC, a person or entity who:

1. Has not been a farm or ranch operator or owner for more than 10 years,
2. Materially and substantially participates in the operation of the farm or ranch, and
3. If an entity, is an entity in which at least 50 percent of the members or stockholders of the entity meet the first two requirements of this definition.

Biobased product means a product determined by CCC to be a commercial or industrial product (other than food or feed) that is:

1. Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
2. An intermediate ingredient or feedstock.

Bioenergy means renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

Biofuel means a fuel derived from renewable biomass.

Biomass conversion facility means a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, or advanced biofuels.

Conservation district is as defined in part 1410 of this chapter.

Conservation plan means a schedule and record of the participant’s decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures for eligible crops and the collection or harvesting of eligible material, as appropriate, and addresses natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Contract acreage means eligible land that is covered by a BCAP contract between the producer and CCC.

Delivery means the point of delivery of an eligible crop or eligible material, as determined by the CCC.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs, or a designee.

Dry ton means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.

Eligible crop means a crop of renewable biomass as defined in this section excluding:

1. Any crop that is eligible to receive payments under Title I, “Commodity Programs,” of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats,
rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

Eligible material is renewable biomass as defined in this section excluding:

(1) Material that is whole grain from any crop that is eligible to receive payments under Title I of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; or material that is mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber;

(2) Animal waste and by-products of animal waste including fats, oils, greases, and manure;

(3) Food waste and yard waste; and

(4) Algae.

Eligible material owner, for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material, who has the risk of loss in the material that is delivered to an eligible facility and who has directly or by agent delivered or intends to deliver the eligible material to a qualified biomass conversion facility, including:

(1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and

(2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the US Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted a copy of the permit or contract authorizing such collection to CCC.

Equivalent plan means a plan approved by a State or other State agency or government entity that is similar to and serves the same purpose as a forest stewardship plan and has similar goals, objectives, and terms. These plans generally address natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Establishment payment means the payment made by CCC to assist program participants in establishing the practices required for non-woody perennial crops and woody perennial crops, as specified in a producer contract under the project portion of BCAP.

Food waste means, as determined by CCC, a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

Forest stewardship plan means a long-term, comprehensive, multi-resource forest management plan that is prepared by a professional resource manager and approved by the State Forester or equivalent State official. Forest stewardship plans address the following resource elements wherever present, in a manner that is compatible with landowner objectives concerning:

(1) Soil and water;

(2) Biological diversity;

(3) Range;

(4) Aesthetic quality;

(5) Recreation;

(6) Timber;

(7) Fish and wildlife;

(8) Threatened and endangered species;

(9) Forest health;

(10) Archeological, cultural and historic sites;

(11) Wetlands;

(12) Fire; and

(13) Carbon cycle.

Higher-value product means an existing market product that is comprised...
Commodity Credit Corporation, USDA § 1450.2

principally of an eligible material or materials and, in some distinct local regions, as determined by the CCC, has an existing market as of October 27, 2010. Higher-value products may include, but are not limited to, products such as mulch, fiberboard, nursery media, lumber, or paper.

Highly erodible land means land as determined as specified in part 12 of this title.

Indian tribe has the same meaning as in 25 U.S.C. 450b (section 4 of the Indian Self-Determination and Education Assistance Act).

Institution of higher education has the same meaning as in 20 U.S.C. 1002(a) (section 102(a) of the Higher Education Act of 1965).

Intermediate ingredient or feedstock means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material (including plant, animal, and marine material), or forestry material that is subsequently used to make a more complex compound or product.

Legal entity has the same meaning as in the regulations in §1400.3 of this chapter.

Matching payments means those CCC payments provided for eligible material delivered to a qualified biomass conversion facility.

Native sod means land:
(1) On which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and
(2) That had never been tilled for the production of an annual crop as of June 18, 2008.

Nonindustrial private forest land means, as defined in 16 U.S.C. 2103a (the Cooperative Forestry Assistance Act of 1978, as amended), rural lands with existing tree cover, or suitable for growing trees, where the land is owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

Offer means, unless otherwise indicated, the per-acre rental payment requested by the owner or operator in such owner’s or operator’s request to participate in the establishment payment and annual payment component of BCAP.

Operator means a person who is in general control of the land enrolled in BCAP, as determined by CCC.

Participant means a person who is participating in BCAP—either as a person who has applied for and is eligible to receive payments, has a BCAP contract, or is a project sponsor.

Payment period means a contract period of either up to 5 years for annual and non-woody perennial crops, or up to 15 years for woody perennial crops, during which the participant receives an annual payment under the establishment payment and annual payment component of BCAP.

Person has the same meaning as in the regulations in §1400.3 of this chapter. In addition, for BCAP, the term “producer” means either an owner or operator of BCAP project acreage that is physically located in a BCAP project area, or a producer of an eligible crop produced on that acreage.

Producer means, with respect to subpart B of this part, a person who had the risk of loss in the production of the material that is the subject of the BCAP payment; and with respect to subpart C of this part, an owner or operator of contract acreage that is physically located within a BCAP project area or a producer of an eligible crop produced on that acreage and who has the risk of loss in the relevant crop at the relevant period of time or who will have the risk of loss in crops required to be produced.

Project area means a geographic area with specified boundaries submitted by a project sponsor and approved by CCC under the establishment payment and annual payment component of BCAP.

Project sponsor means a group of producers or a biomass conversion facility who proposes a project area.

Qualified biomass conversion facility means a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a BCAP agreement with CCC.

Renewable biomass means:
(1) Appropriate materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Department of the Interior, Bureau of Land Management land that:
(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of 16 U.S.C. 6512 (specifically, sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 and large-tree retention provisions of subsection (f)); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including:

(A) Feed grains;
(B) Other agricultural commodities;
(C) Other plants and trees; or
(D) Algae;

(ii) Waste material, including:

(A) Crop residue;
(B) Other vegetative waste material (including wood waste and wood residues);
(C) Animal waste and byproducts (including fats, oils, greases, and manure); and
(D) Food waste and yard waste.

Socially disadvantaged farmer or rancher means, unless other classes of persons are approved by CCC in writing, a farmer or rancher who is a member of a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Groups include:

(1) American Indians or Alaskan Natives;
(2) Asians or Asian Americans;
(3) Blacks or African Americans;
(4) Native Hawaiians or other Pacific Islanders; and
(5) Hispanics.

Technical assistance means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with BCAP to owners or operators, as approved by CCC, includes, but is not limited to: Technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Tribal government means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaskan Native Village, or regional or village corporation as defined in or established pursuant to 43 U.S.C. 1601–1629h (the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible to receive or retain all or a portion of BCAP payments.

Yard waste means any renewable biomass generated from municipal or residential land, such as urban forestry materials, construction or demolition materials, trimmings from grasses and trees, or biomass removed due to invasive species or weather-related disaster, that can be separated from and has low potential (such as contamination with plastics, metals, chemicals, or other toxic compounds that cannot be removed) for the generation of toxic byproducts resulting from conversion, and that otherwise cannot be recycled for other purposes (such as post-consumer waste paper).

§ 1450.3 General.

(a) The objectives of BCAP are to:

(1) Support the establishment and production of eligible crops for conversion to bioenergy and biobased products in selected project areas; and

(2) Assist agricultural and forest landowners and operators with matching payments to support the collection, harvest, storage, and transportation costs of eligible material for use in a biomass conversion facility.

(b) A participant must implement and adhere to a conservation plan, forest stewardship plan, or equivalent plan prepared in accordance with BCAP guidelines, as established and determined by CCC. A conservation plan, forest stewardship plan, or equivalent plan for contract acreage must be implemented by a participant and must be approved by the conservation district in which the lands are located, or, in the case of Federal lands, the appropriate approval authority of jurisdiction. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) Agricultural and forest landowners and operators must comply with any applicable existing conservation plan, forest stewardship plan, or equivalent plan and all other applicable laws, regulations, or Executive Orders for any removal of eligible material for use in a biomass conversion facility to receive matching payments.

(d) Except as otherwise provided in this part, a participant may receive, in addition to any payments under this part, financial assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in BCAP, without any commensurate reduction in BCAP payments.

§ 1450.4 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a BCAP contract, CCC may terminate the BCAP contract.

(2) If the BCAP contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under the contract and must refund all payments previously received, plus interest; and

(ii) The participant must pay liquidated damages to CCC in an amount as specified in the contract.

(b) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and would not deter the accomplishment of the purposes of BCAP.

§ 1450.5 Performance based on advice or action of USDA.

(a) The provisions of § 718.303 of this title relating to performance based on the action or advice of an authorized representative of USDA apply to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise permitted by this part.

(b) [Reserved]

§ 1450.6 Access to land.

(a) For purposes related to this program, the participant must upon request provide any representative of USDA, or designee thereof, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant must provide such representatives or designees with access to examine records for the land to determine land classification, eligibility, or for other purposes, and to determine whether the participant is in compliance with the terms and conditions of the BCAP contract.

§ 1450.7 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part will be divided as specified in the applicable contract. CCC may refuse to
enter into a contract when there is a disagreement among persons or legal entities seeking enrollment as to a person’s or legal entity’s eligibility to participate in the contract as a tenant or sharecropper, and there is insufficient evidence, as determined by CCC, to indicate whether the person or legal entity seeking participation as a tenant or sharecropper has an interest in the acreage offered for enrollment in the BCAP.

(b) CCC may remove an operator or tenant from a BCAP contract when:
(1) The operator or tenant requests in writing to be removed from the BCAP contract;
(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;
(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined appropriate by CCC; or
(4) A court of competent jurisdiction orders the removal of the operator or tenant from the BCAP contract and such order is received by CCC.

(c) Tenants who fail to maintain tenancy on the acreage under contract for any reason may be removed from a contract by CCC.

§ 1450.8 Payments not subject to claims.

(a) Subject to part 1403 of this chapter, any payment or portion of the payment due any person or legal entity under this part will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

(b) [Reserved]

§ 1450.9 Assignments.

(a) Participants may assign the right to receive cash payments under BCAP, in whole or in part, as provided in part 1404 of this chapter.

(b) [Reserved]

§ 1450.10 Appeals.

(a) Except as provided in paragraph (b) of this section, a person or legal entity applying for participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by the Natural Resources Conservation Service may be appealed in accordance with procedures established under part 614 of this title or otherwise established by the Natural Resources Conservation Service.

§ 1450.11 Scheme or device.

(a) If CCC determines that a person or legal entity has employed a scheme or device to defeat the purposes of this part, or any part, of any USDA program, payment otherwise due or paid such person or legal entity during the applicable period may be required to be refunded, with interest calculated from the date of disbursement of the funds by CCC, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or legal entity of any payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities must report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest may include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest will be considered a scheme or device under this section.

§ 1450.12 Filing of false claims.

(a) If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the contract may be terminated, in
Subpart B—Matching Payments

§ 1450.100 General.

(a) A person or legal entity with the right to collect or harvest eligible material for the sale and delivery of such eligible material to a qualified biomass conversion facility, may be eligible for payment under the provisions of this subpart.

(b) [Reserved]

§ 1450.101 Qualified biomass conversion facility.

(a) To be considered a qualified biomass conversion facility, a biomass conversion facility must enter into an agreement with CCC and must:

(1) Meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;

(2) Agree in writing to:

(i) Maintain accurate records of all eligible material purchases and related documents regardless of whether matching payments will be sought by the seller; and

(ii) Make available at one place and 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 BCAP for not less than 3 years after the date that eligible material was delivered to the qualified biomass conversion facility;

(iii) Clearly indicate the actual tonnage delivered on the scale ticket or equivalent to be provided to the eligible material owner;

(iv) Calculate a total dry ton weight equivalent of the actual tonnage delivered and provide that measurement to the eligible material owner;

(v) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered;

(vi) Pay fair market value for eligible material regardless of whether the seller has applied for or receives a matching payment authorized by this subpart.

(b) For a qualified biomass conversion facility, CCC can:
§ 1450.102 Eligible material owner.

(a) In order to be eligible for a payment under this subpart, a person or legal entity must:

(1) Be a producer of an eligible crop that is produced on contract acreage authorized by subpart C of this part; or

(2) Have the right to collect or harvest eligible material and such person may only receive payment if the risk of loss for the material transferred to that person occurred prior to the time the payment is made that will be used to determine the matching payment that is requested under this subpart; and

(3) Certify that the eligible material for which a payment may be issued according to §1450.106 has been harvested according to a conservation plan, forest stewardship plan, or plan that CCC determined to be an equivalent plan, that provides the following:

(A) The purpose of the harvest of the eligible material;

(B) The expected volume of the harvest;

(C) The total number of acres to be harvested;

(D) The name of the eligible material owner(s); and

(E) Any additional information, as determined by CCC; and

(iii) Consistent with Executive Order 13112, “Invasive Species.”

(3) Woody eligible material produced on land other than contract acreage must be:

(i) Byproducts of preventative treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; and

(ii) If harvested from Federal lands then done so in accordance with the requirements for old-growth maintenance, restoration, and management direction provided by 16 U.S.C. 6512 for Federal lands; and

(4) Eligible material must be delivered to a qualified biomass conversion facility (as specified in §1450.101 and other provisions of these regulations).

§ 1450.103 Eligible material that qualifies for payment.

(a) Except for paragraph (b) of this section, in order to qualify, as determined by CCC, for a payment under this subpart:

(1) Eligible material must be renewable biomass that, at a minimum, meets the definition in §1450.2 and is listed on the official Web site for BCAP as an eligible material at http://www.fsa.usda.gov/energy;

(2) Eligible material must be collected or harvested by the eligible material owner:

(i) Directly from:

(A) National Forest System land, Bureau of Land Management land;

(B) Non-Federal land; or

(C) Land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States;

(ii) Consistent with a conservation plan, forest stewardship plan, or plan that CCC determined to be an equivalent plan, that provides the following:

(A) The purpose of the harvest of the eligible material;

(B) The expected volume of the harvest;

(C) The total number of acres to be harvested;

(D) The name of the eligible material owner(s); and

(E) Any additional information, as determined by CCC; and

(iii) Consistent with Executive Order 13112, “Invasive Species.”

(3) Woody eligible material produced on land other than contract acreage must be:

(i) Byproducts of preventative treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; and

(ii) If harvested from Federal lands then done so in accordance with the requirements for old-growth maintenance, restoration, and management direction provided by 16 U.S.C. 6512 for Federal lands; and

(4) Eligible material must be delivered before October 27, 2010;
(2) Any eligible material for which payment from a biomass conversion facility was received before the application for payment under this subpart is received and approved by the FSA county office, as specified in §1450.104;

(3) Any woody eligible material collected or harvested outside contract acreage that would otherwise be used for higher-value products; or

(4) Any otherwise eligible material collected or harvested outside contract acreage that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value market product in order to be used for heat, power, biobased products, or advanced biofuels.

§ 1450.104 Signup.

(a) Applications for participation and requests for payments under this subpart will be accepted on a continuous basis.

(b) An eligible material owner must apply to participate in the matching payments component of BCAP before payment for the eligible material is received from a qualified biomass conversion facility. The application must be submitted to the FSA county office and approved by CCC before any payment is made by the qualified biomass conversion facility for the eligible material.

(c) Applications must include the following:

(1) Based on information obtained from contracts, agreements, or binding letters of intent:

(i) An estimate of the total dry tons of eligible material expected to be sold to the qualified biomass conversion facility;

(ii) The type(s) of eligible material that is expected to be sold;

(iii) The name of the qualified biomass conversion facility that will purchase the eligible material;

(iv) The expected, fair market, per dry ton payment rate the owner plans to receive for the delivery of the eligible material; and

(v) The date or dates the eligible material is expected to be delivered to the qualified biomass conversion facility.

(2) A new or amended conservation plan, forest stewardship plan, or equivalent plan, as specified in §1450.103.

(d) Eligible material owners who deliver eligible material to more than one qualified biomass conversion facility must submit separate applications for each facility to which eligible material will be delivered.

(e) After delivery, eligible material owners must notify CCC and request the payment. Payments will be disbursed only after delivery is verified by CCC.

(f) Information that must be submitted to CCC in order to request payments includes settlement, summary, or other acceptable data that provide:

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using standard moisture determinations applicable to the eligible material;

(2) Total payment received, including the per dry-ton payment rate(s) matched with actual and dry weight tonnage delivered; and

(3) The qualified biomass conversion facility's certification as to the authenticity of the information.

§ 1450.105 Obligations of participant.

(a) All participants whose payment application was approved must agree to:

(1) Carry out and certify compliance with the terms and conditions of the payment application including adherence to a conservation plan, forest stewardship plan, or equivalent plan, as appropriate; and

(2) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP contract and this part.

(b) [Reserved]

§ 1450.106 Payments.

(a) Payments under this subpart will be for a term not to exceed 2 years beginning the date that CCC issues the

759
first payment, under this subpart to the participant and for each partici-
pant runs from the date that the par-
ticipant receives a matching payment
from CCC even though the participant
may over time change facilities. The
Deputy Administrator may further
limit the period to reflect participation
in BCAP for any time prior to October
27, 2010 as the Deputy Administrator
dems appropriate. In addition, where
ownership of a source of material has
changed, or where it is deemed that
other circumstances warrant, the Dep-
uty Administrator may apply the time
limit applicable to a person or entity
or to another person or entity to assure
that the 2-year limit is not avoided by
private arrangement or other cir-
cumstance.

(b) Payments under this subpart will
be paid at a rate of $1 for each $1 per
dry ton provided by the qualified bio-
mass conversion facility for the mar-
ket-based sale of eligible material in
an amount up to $45 per dry ton.

Subpart C—Establishment
Payments and Annual Payments

§ 1450.200 General.

(a) As provided in this subpart, estab-
lishment payments and annual pay-
ments may be provided by CCC to pro-
ducers of eligible crops within a project
area.

(b) [Reserved]

§ 1450.201 Project area proposal sub-
mission requirements.

(a) To be considered for selection as a
project area, a project sponsor must
submit a proposal to CCC that in-
cludes, at a minimum:

(1) A description of the sources of re-
newable biomass, eligible land, and eli-
gible crops that may be enrolled within
the proposed project area;

(2) A letter of commitment from a
biomass conversion facility stating
that the facility will use, for BCAP
purposes, eligible crops intended to be
produced in the proposed project area;

(3) Information demonstrating that
the biomass conversion facility will
have sufficient equity available to op-
erate if the facility is not operational
at the time the project area proposal is
submitted; and

(4) Other information that gives CCC
a reasonable assurance that the bio-
mass conversion facility will be in op-
eration in a timely manner so that it
will utilize the eligible crops, as deter-
mined by CCC.

(b) The project area description re-
quired in paragraph (a) of this section
needs to specify geographic boundaries
and be described in definite terms such
as acres, watershed boundaries, mapped
longitude and latitude coordinates, or
counties.

(c) The project area needs to be phys-
ically located near a biomass conver-
sion facility or facilities, as deter-
dined by CCC.

(d) Project area proposals may limit
the nature and types of eligible crops
to be established within a project area.

§ 1450.202 Project area selection cri-
teria.

(a) In selecting project areas, CCC
will consider:

(1) The dry tons of the eligible crops
proposed to be produced in the pro-
posed project area and the probability
that such crops will be used for BCAP
purposes;

(2) The dry tons of renewable biomass
projected to be available from sources
other than the eligible crops grown on
contract acres;

(3) The anticipated economic impact
in the proposed project area;

(4) The opportunity for producers and
local investors to participate in the
ownership of the biomass conversion
facility in the proposed project area;

(5) The participation rate by begin-
ning or socially disadvantaged farmers
or ranchers;

(6) The impact on soil, water, and re-
lated resources;

(7) The variety in biomass production
approaches within a project area, in-
cluding agronomic conditions, harvest
and postharvest practices, and
monoculture and polyculture crop
mixes;

(8) The range of eligible crops among
project areas; and

(9) Any other additional criteria, as
determined by CCC.

(b) [Reserved]
§ 1450.203 Eligible persons and legal entities.

(a) In order to be eligible to enter into a BCAP contract for this subpart, a person or legal entity must be an owner, operator, or tenant of eligible land within a project area, as defined in §1450.204 and be the person or entity with the ability to perform under the terms of the contract.

(b) [Reserved]

§ 1450.204 Eligible land.

(a) For the purposes of this subpart, eligible land must be physically and legally capable of producing an eligible crop and must be:

1. Agricultural land; or
2. Nonindustrial private forest land.

(b) For the purposes of this subpart, eligible land is not:

1. Federal- or State-owned land, including land owned by local governments or municipalities;
2. Land that is native sod;
3. Land enrolled in the Conservation Reserve Program operated under part 1410 of this chapter;
4. Land enrolled in the Wetlands Reserve Program operated under part 1467 of this chapter; or
5. Land enrolled in the Grassland Reserve Program operated under part 1415 of this chapter.

§ 1450.205 Duration of contracts.

(a) Contracts under this subpart will be for a term of up to:

1. 5 years for annual and non-woody perennial crops; and
2. 15 years for woody perennial crops.

(b) The establishment time period may vary due to: Type of crop, agronomic conditions (for example, establishment time frame, winter hardiness), and other factors.

§ 1450.206 Obligations of participant.

(a) All participants subject to a BCAP contract must:

1. Carry out the terms and conditions of the contract;
2. Make available to CCC or to an institution of higher education or other entity designated by CCC, such information as CCC determines to be appropriate to promote the production of eligible crops and the development of renewable biomass conversion technology;
3. Comply with the highly erodible land and wetland conservation requirements of part 12 of this title;
4. Implement a:
   (i) Conservation plan;
   (ii) Forest stewardship plan, or
   (iii) Equivalent plan.
5. Implement the conservation plan, forest stewardship plan, or equivalent plan which is part of such contract, in accordance with the schedule of dates included in such conservation plan, forest stewardship plan, or equivalent plan, unless CCC determines that the participant cannot fully implement the conservation plan, forest stewardship plan, or equivalent plan for reasons beyond the producer’s control and CCC and the participant agree to a modified plan.
6. Demonstrate compliance with the conservation plan, forest stewardship plan, or equivalent plan through required self-certification subject to compliance spot checks, as determined by CCC.
7. Establish temporary vegetative cover either within the timeframes required by the conservation plan, forest stewardship plan, or equivalent plan or as determined by the Deputy Administrator, if the eligible crops cannot be timely established; and
8. If the participant has a share of the payment greater than zero, be jointly and severally responsible with the other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the contract and this part.

(b) Payments may cease and producers may be subject to contract termination for failure to establish eligible crops.

(c) A contract will not be terminated for failure by the participant to establish an approved cover on the land if, as determined by CCC:

1. The failure to plant or establish such cover was due to a natural disaster such as excessive rainfall, flooding, or drought; and
2. The participant establishes the approved cover as soon as practicable.
§ 1450.207 Conservation plan, forest stewardship plan, or equivalent plan.

(a) The producer must implement a conservation plan, forest stewardship plan, or equivalent plan that complies with CCC guidelines and is approved by the appropriate conservation district for the land to be entered in BCAP. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, or disapproves the conservation plan, forest stewardship plan, or equivalent plan, such approval may be waived by CCC.

(b) The practices and management activities included in a conservation plan, forest stewardship plan, or equivalent plan, and agreed to by the producer, must be implemented in a cost-effective manner that meets BCAP purposes as determined by CCC.

(c) If applicable, a tree planting plan must be developed and included in the conservation plan, forest stewardship plan, or equivalent plan. Such tree planting plan may allow a reasonable time to complete plantings, as determined by CCC.

(d) Each conservation plan, forest stewardship plan, or equivalent plan, and any revision of the plan, will be subject to approval by CCC.

§ 1450.208 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan, forest stewardship plan, or equivalent plan that meet all standards needed to cost-effectively establish:

(1) Annual crops;
(2) Non-woody perennial crops; and
(3) Woody perennial crops.

(b) [Reserved]

§ 1450.209 Signup.

(a) Offers for contracts may be submitted on a continuous basis to CCC as determined by the Deputy Administrator.

(b) [Reserved]
Commodity Credit Corporation, USDA

§ 1450.214  Annual payments.

(a) Annual payments will be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the BCAP contract.

(b) Based on the regulations in §1410.42 of this chapter and as determined by CCC, annual payments include a payment based on all or a percentage of:

§ 1450.213 Levels and rates for establishment payments.

(a) CCC will pay not more than 75 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by CCC. This means that the calculated 75 percent of the average cost may represent less than 75 percent of the actual cost for an individual participant.

(c) Except as otherwise provided for in this part, a participant may receive, in addition to any payment under this part, establishment assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in BCAP without a commensurate reduction in BCAP establishment payments.

§ 1450.212 Establishment payments.

(a) Establishment payments will be made available upon a determination by CCC that an eligible practice, or an identifiable portion of a practice, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, such payments will be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, such payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received establishment assistance from any Federal agency.

(d) Establishment payments may be authorized for the replacement or restoration of practices on land for which assistance has been previously allowed under BCAP, only if the failure of the original practice was due to reasons beyond the control of the participant, as agreed to by CCC.

(e) In addition, CCC may make partial payments when the participant completes identifiable components of the contract. CCC may make supplemental establishment payments, if necessary.
(1) A weighted average soil rental rate for cropland;
(2) The applicable marginal pastureland rental rate for all other land except for nonindustrial private forest land;
(3) For forest land, the average county rental rate for cropland as adjusted for forest land productivity for nonindustrial private forest land; and
(4) Any incentive payment as determined by CCC.

(c) The annual payment will be divided among the participants on a single contract as agreed to in such contract, as determined by CCC.

(d) A participant that has an established eligible crop and is therefore not eligible for establishment payments under §1450.212 may be eligible for annual payments under the provisions of this section.

(e) In the case of a contract succession, annual payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual payments will be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) Annual payments will be reduced, as determined by CCC:
(1) By a percentage of the sum of the sale price and payments under subpart B of this part for the crop collected or harvested from the contract acreage as follows:
(i) By 1 percent if the eligible crop is delivered to a biomass conversion facility for conversion to cellulosic biofuels as defined by 40 CFR 80.1401;
(ii) By 10 percent if the eligible crop is delivered to a biomass conversion facility for conversion to advanced biofuels;
(iii) By 25 percent if the eligible crop is delivered to a biomass conversion facility for conversion to heat, power, or biobased products;
(iv) By 100 percent if the eligible crop is used for a purpose other than conversion to heat, power, biobased products, or advanced biofuels;
(2) If the producer violates a term of the contract; or
(3) In other circumstances deemed necessary or appropriate to carry out BCAP.

§ 1450.215 Transfer of land.

(a) (1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, land subject to a BCAP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new BCAP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator will assume all obligations of the BCAP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a BCAP contract with CCC, then, except as otherwise determined by the Deputy Administrator:
(i) Establishment payments will be made to the past or present participant who established the practice; and
(ii) Annual payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in §1450.214(c).

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a BCAP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, or such other time as CCC determines to be appropriate, such contract will be terminated with respect to the affected portion of such land, and the original participant:
(1) Forfeits all rights to any future payments for that acreage;
(2) Must refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by CCC. The provisions of §1450.211(g) will apply.
(c) Federal agencies acquiring property, by foreclosure or otherwise, that
contains BCAP contract acreage cannot be a party to the contract by succession. However, through an addendum to the contract, if the current operator of the property is one of the contract participants, the contract may remain in effect and, as permitted by CCC, such operator may continue to receive payments under such contract if CCC determines that such allowance is in the public interest and:

(1) The property is maintained in accordance with the terms of the contract;
(2) Such operator continues to be the operator of the property; and
(3) Ownership of the property remains with such Federal agency.

PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

Sec.
1455.1 Purpose and administration.
1455.2 Definitions.
1455.10 Eligible grant applicants.
1455.11 Application procedure.
1455.20 Criteria for grant selection.
1455.21 Additional responsibilities of grantee.
1455.30 Reporting requirements.
1455.31 Miscellaneous.


SOURCE: 75 FR 39140, July 8, 2010, unless otherwise noted.

§ 1455.1 Purpose and administration.

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA–HIP).

(b) VPA–HIP provides, within funding limits, grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and tribal governments. VPA–HIP is not an entitlement program and no grant will be made unless the application is acceptable to the Commodity Credit Corporation (CCC). CCC may reject a application for any reason deemed sufficient by CCC.

(c) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, CCC, or a designee, or the Deputy Administrator, Farm Programs (Deputy Administrator), Farm Service Agency (FSA).

§ 1455.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Appropriate wildlife habitat means habitat that is suitable or proper, as determined by the applicable State or tribal government, to support fish and wildlife populations in the area.

Forest land means the land that meets the definition of “farmland” in § 718.2 of this title.

Privately-held land means farm, ranch, or forest land that is owned or operated by an individual or entity that is not an entity of any government unit or Tribe.

State or State government means any State or local government, including
§ 1455.10 Eligible grant applicants.

(a) A State or Tribal government may apply for a VPA–HIP grant.

(b) Any applications received by an individual or entity that is not a State or tribal government will not be considered.

§ 1455.11 Application procedure.

(a) Request for applications (RFA). CCC will issue periodic RFAs for VPA–HIP on www.grants.gov, subject to available funding. Unless otherwise specified in the applicable RFA, applicants must file an original and one hard copy of the required forms and an application.

(b) Single application. A State or tribal government must include all proposed activity under a single application per RFA review period. Multiple applications from an applicant during a single RFA period will not be considered. The applicant is the individual State or Tribe; any application from any unit of the State or tribal government must be coordinated for a single submission of one application from the State or Tribe.

(c) Incomplete applications. Incomplete applications will not be considered for funding. However, incomplete applications may be returned, and may be resubmitted, if time permits.

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

(e) Required forms. The following forms must be completed, signed, and submitted as part of the application; other forms may be required, as specified in the applicable RFA:

1. Application for Federal Assistance;
2. Budget Information—Non-Construction Programs; and
3. Assurances—Non-Construction Programs.

(f) Application. Each application must contain the following elements; additional required elements may be specified in the applicable RFA:

1. Title page;
2. Table of contents;
3. Executive summary, which includes:
   (i) Activities. Provide a summary of the application that briefly describes activities proposed to be funded under the grant.
   (ii) Objectives, funding, performance, and other resources. Include objectives and tasks to be accomplished, the amount of funding requested, how the work will be performed, whether organizational staff, consultants or contractors will be used, and whether other resources will be used;
4. Eligibility certification that certifies that the applicant is a State or tribal government and the individual submitting the application is acting in a representative capacity on behalf of the State or tribal government;
5. Application narrative that must include, but is not limited to, the following:
   (i) Project title. The title of the proposed project must be brief (not to exceed 75 characters) yet describe the essentials of the project.
   (ii) Information sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFA, followed by the page numbers of all relevant material and documentation contained in the application that address or support the criteria.
   (iii) Objectives of the project. This section must include the following:
   (A) A description of how the VPA–HIP funding will be used to encourage public access to private farm, ranch,
Commodity Credit Corporation, USDA § 1455.20

and forest land for hunting, fishing, and other recreational purposes;

(B) A description of the methods that will be used to achieve the provisions of paragraph (f)(5)(iii)(A) of this section;

(C) A description of how and to what extent the proposed program will meet with widespread acceptance among landowners;

(D) A detailed description of how and to what extent the land enrolled will have appropriate wildlife habitat and how program funds may be used to improve those habitats;

(E) A detailed description of how and to what extent public hunting and other recreational access will be increased on land enrolled under a Conservation Reserve Enhancement Program as specified under §1410.50 of this chapter, or if Conservation Reserve Enhancement Program land is not available, specify that there is no impact;

(F) A detailed description of how any additional Federal, State, tribal government, or private resources will be used to carry out grant activities; and

(G) A detailed description of how the public will be made aware of the location of the land enrolled.

(iv) Work plan. Applications must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved with administration of the grant, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of a VPA–HIP grant. The budget must present a breakdown of the estimated costs associated with VPA–HIP activities and allocate these costs to each of the tasks to be undertaken. Additional funds from Federal, State, tribal government, or private resources as well as grant funds and resources provided in kind must be accounted for in the budget.

(v) Performance evaluation criteria. Applications should discuss how the State or tribal government will evaluate whether the program for which the grant is being sought will meet the stated goals for the State or tribal program, including but not limited to landowner and recreationist participation, outreach, and cost-effectiveness.

(vii) Other similar efforts. The applicant must describe its previous accomplishments and outcomes in public access activities, if any.

(viii) Qualifications of personnel. Applicants must describe the qualifications of personnel expected to perform key tasks, and whether these personnel are to be full- or part-time employees or contract personnel.

§ 1455.20 Criteria for grant selection.

(a) Incomplete or non-responsive applications will not be evaluated. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

(b) After all applications have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the RFA, a list of all applications in ranked order, together with funding level recommendations, will be submitted to the Deputy Administrator, FSA.

(c) Unless supplemented in a RFA, applications for grants for VPA–HIP will be evaluated using the criteria listed in this section. The distribution of points to be awarded per criterion will be identified in the RFA.

(1) Benefits. The application will be evaluated to determine whether and to what extent the project’s anticipated outcomes promote improvement of public access for wildlife-dependent recreation and intended environmental benefits.

(2) Project description and feasibility. The application will be evaluated on the extent and quality to which the applicant demonstrates a reasonable approach to the project, sufficient resources to complete the project, and a capability to complete the project in a timely manner.

(3) Widespread acceptance and maximizing participation of landowners. The application will be evaluated based on the applicant’s plan for encouraging the participation of owners and operators of privately-held farm, ranch, and forest land, and for engaging the public users. Additionally, the extent to which the applicant has identified and established relationships with the partners necessary to achieve the project’s goals will be evaluated.
(4) **Appropriate wildlife habitat.** The application will be evaluated to determine whether the applicant demonstrates expertise in providing technical assistance with respect to establishing and maintaining appropriate wildlife habitat on public access land.

(5) **Strengthening wildlife habitat for lands under the Conservation Reserve Enhancement Program (CREP).** The application will be evaluated to determine whether the project proposes to provide incentives to increase public hunting and other recreational access on land enrolled under CREP as authorized by §1410.50.

(6) **Additional private, Federal, State, or tribal government resources.** The application will be evaluated to determine the extent to which the support letters provided by other organizations involved with the project demonstrate specific and quantified commitments to the project. Applications that demonstrate additional resources will receive more points, all else being equal, than those that do not.

(7) **Making available the location of enrolled land.** The application will be evaluated to determine how the project proposes to make available to the public the location of the land enrolled.

(8) **Performance evaluation criteria.** The application will be evaluated to determine whether the grant applicant has included outcome-based performance measures.

(9) **Administrative capabilities.** The application will be evaluated to determine whether the grant applicant has a track record of administering the project or, in the absence of a track record, the capacity to administer the project. Applicants that have demonstrated capable financial systems and audit controls, personnel and program administration performance measures, and clear rules of governance will receive more points than those not evidencing this capacity.

(10) **Delivery.** The application will be evaluated to determine whether the applicant has a track record in implementing public access or similar programs or, in the absence of an actual track record, the capacity to implement a public access program. The applicant’s potential for delivering an effective public access program and the expected effects of that program will also be assessed.

(11) **Work plan and budget.** The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the components of the application. Clear, logical, realistic, and efficient plans will result in a higher score. Budgets will be reviewed for completeness and whether and to what extent additional resources were committed by Federal, State, or tribal government, and private resources.

(12) **Qualifications of those performing the tasks.** The application will be reviewed to determine if key personnel have appropriate knowledge, skills, and abilities with respect to wildlife-dependent recreation including hunting or fishing on privately-held farm, ranch, and forest land, funds control, grants management, performance monitoring and evaluation, or other activities relevant to the success of the proposed public access program.

§ 1455.21 Additional responsibilities of grantee.

(a) Before receiving grant funding, the grantee will be required to sign an agreement similar in form and substance to the form of agreement published within or as an appendix to the RFA. The agreement will require the grantee to commit to do all of the following:

(1) Take all practicable steps to develop continuing sources of financial support from other Federal, State, tribal government, or private resources;

(2) Make arrangements for the monitoring and evaluation of the activities related to implementation of the public access program of the owners or operators that enroll farm, ranch, and forest land; and

(3) Provide an accounting for the money received by the grantee under this subpart.

(b) Grantees will be required to monitor funds or services as specified in paragraph (c) of this section, and must agree to that monitoring before grant funds are awarded.

(c) The grantee must certify that the grant funds and services will not be
Commodity Credit Corporation, USDA

used for ineligible purposes. Specifically, grant funds and services may not be used to:

(1) Duplicate or replace current services; however, grant funds may be used to expand the level of effort or service beyond what is currently being provided;

(2) Pay costs of preparing the application for funding under VPA–HIP;

(3) Pay costs of the project incurred prior to the date of grant approval;

(4) Fund political activities;

(5) Pay any judgment or debt owed to the United States;

(6) Pay for the design, repair, rehabilitation, acquisition, or construction of a building or facility (including a processing facility);

(7) Purchase, rent or pay for the installation of fixed equipment, other than property identification signs;

(8) Pay for the repair of privately owned vehicles; or

(9) Pay for research and development not directly related to quantifying the performance of VPA–HIP lands enrolled with funding from VPA–HIP.

(d) Grant agreements under this part will be for a term of up to 3 years.

(e) Grantees that are States will have the grant amount reduced by 25 percent if opening dates for migratory bird hunting in the State are not consistent for residents and non-residents. This paragraph does not apply to grantees that are Tribal governments.

(f) Failure of the grantee to execute a grant agreement in a timely fashion, as determined by the CCC, will be construed to be a withdrawal from VPA–HIP.

§ 1455.30 Reporting requirements.

(a) Grantees must provide the following to FSA:

(1) A “Financial Status Report” listing expenditures according to agreed upon budget categories, on a periodic basis as specified in the grant document.

(2) Annual performance reports that compare accomplishments to the objectives stated in the application, and that also:

(i) Identify all tasks completed to date and provide documentation supporting the reported results;

(ii) If the original schedule provided in the work plan is not being met, the report must discuss the problems or delays that may affect completion of the project;

(iii) List objectives for the next reporting period; and

(iv) Discuss compliance with any special conditions on the use of award funds. Reports are due as provided in paragraph (a)(1) of this section.

(3) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

(b) All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 1455.31 Miscellaneous.

(a) Inspection. Grantees must permit periodic inspection of the program operations by a CCC representative, as determined by CCC.

(b) Performance evaluation. CCC will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(c) Suspend, terminate, or require refund. CCC may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, and require refund of part or all of the grant, with interest, where CCC has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) The opening dates for migratory bird hunting in a State have been changed so as to be not consistent for residents and non-residents during the term of the grant;

(3) There is reasonable evidence that shows joint funding has not been or will not be forthcoming on a timely basis; or

(4) Such other cause as CCC identifies in writing to the grantee based on reasonable evidence (including but not limited to the use of Federal grant funds for ineligible purposes).

(d) Advance or reimbursement. Grantees must use the request for advance or reimbursement form, which will be
provided by CCC, to request advances or reimbursements;
(e) Appeals. Appeals will be handled according to 7 CFR parts 11 and 780.
(f) Environmental review. All grants made under this subpart are subject to the requirements of 7 CFR part 739.
Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.
(g) Civil rights. CCC prohibits discrimination in all its programs 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 a part of an individual’s income is derived from any public assistance program. VPA–HIP will also be administered in accordance with all other applicable civil rights law.
(h) Other USDA regulations. The grant program under this part is subject to the provisions of the following regulations, as applicable:
(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;
(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
(4) 7 CFR part 3018, New Restrictions on Lobbying;
(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and
(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.
(i) Audit. Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.
(j) Change in scope or objectives. The Grantee must obtain prior approval from FSA for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, or recovery of grant funds.
(k) Exceptions. CCC may, in individual cases, make an exception to any requirement or provision of this part, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, that CCC determines that the application of the requirement or provision would adversely affect the Federal Government’s interest.
(l) Enforcement and refunds; liens and schemes or devices. Grantees must comply with all conditions of the grant and any moneys not spent or improperly spent must be returned immediately with interest to run at the normal rate for CCC obligations. Interest charges will be computed from the date of the CCC disbursement. Grantees must ensure that parties that receive funds from the grantee comply with the grantee’s application and return funds made available by the grantee where there is no such compliance. Any scheme or device to avoid any limits of this part will be considered to be a program violation with respect to any grant to which that scheme or device is related. Grant funds will be made available to the States or Tribes that are grantees under this part without regard to the claims of others, unless CCC determines otherwise.

PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

Subpart A—Tobacco Transition Assessments

Sec.
1463.1 General.
1463.2 Administration.
1463.3 Definitions.
1463.4 National assessment.
1463.5 Division of national assessment among classes of tobacco.
1463.6 Determination of persons liable for payment of assessments.
1463.7 Division of class assessment to individual entities.
1463.8 Notification of assessments.
§ 1463.3 Definitions.

The definitions in this section shall apply for all purposes of administering the provisions of this subpart:

*Act* means Title VI of the America Jobs Creation Act of 2004 (Public Law 108–357).

*Adjusted market share* means the market share of a manufacturer of tobacco products or an importer of tobacco products adjusted to reflect such entity’s share of a class of tobacco during the immediately preceding calendar year quarter. With respect to the 39th and 40th quarterly payments due on September 30, 2014, the adjusted market share will be the entity’s share of a class of tobacco during the April 1–June 30, 2014 quarter.

*Base period* means the period July 1 through June 30 immediately preceding the beginning of a fiscal year.

*CCC’s point of contact* means, for items physically sent to CCC, “Fibers, Peanuts, and Tobacco Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0515, Room 3720–S, 1400 Independence Avenue, SW., Washington, DC 20250–0515” unless otherwise specified by CCC through actual notice.

*Calendar year* means the period January 1 through December 31.

*Class of tobacco* means each of the following types of tobacco and tobacco products for which taxes are required to be paid for the removal of such into domestic commerce: cigarettes; cigars; snuff; roll-your-own tobacco; chewing tobacco; and pipe tobacco.

*Domestic manufacturer of tobacco products* means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the production of tobacco products under title 27 of the Code of Federal Regulations.

*Fiscal year* means the period October 1 through September 30.

*Gross domestic volume* means the volume of tobacco products removed, as defined by section 5702 of the Revenue Code, and not exempt from tax under chapter 52 of such code at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.
§ 1463.4 Importer of tobacco products means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the importation of tobacco products under title 27 of the Code of Federal Regulations.

Market share means the share of each domestic manufacturer and importer of a class of tobacco product, to the fourth decimal place, of the total volume of domestic sales of the class of tobacco product in the base period. Such sales shall be determined by CCC by using the total volume of such class of tobacco product that is removed into domestic commerce in the base period.

National assessment means the total amount of funding that CCC has determined to be necessary to collect in a year from domestic manufacturer and importer of tobacco products in order to reimburse CCC for expenditures that it will incur in the year for expenses incurred under sections 622 and 623 of the Act in making payments under subpart B of this part; losses sustained by CCC in the disposition of tobacco acquired under price support loan agreements as provided in section 641(c) of the Act; and costs incurred by CCC in the utilization of financial institutions in administering sections 622 and 623 of the Act.


Tobacco Trust Fund means an account established for deposit of assessments collected under this subpart, plus interest that accrues on such assessments, to be used to implement this subpart.

which they wish to receive notifications required by the Act to be made to them by CCC; and

(ii) On a monthly basis for each class of tobacco, the total amount of tobacco products, summarized by employer identification number or such other method as may be prescribed by CCC, that are required to be reported to the United States Department of the Treasury or to the Department of Homeland Security in each month beginning October 1, 2004, and ending September 30, 2014.

(2) The information required to be submitted to CCC under paragraph (b)(1) of this section must be submitted by:

(i) With respect to fiscal year 2005 activities occurring prior to February 10, 2005, by February 25, 2005; and

(ii) With respect to all other activities, on the same date the information was required to be submitted to the United States Department of the Treasury or to the Department of Homeland Security.

§ 1463.8 Notification of assessments.

(a) Once CCC has determined a national assessment, CCC will collect that amount on a quarterly basis from all domestic manufacturers and importers of tobacco products subject to §1463.5.

(b) 30 calendar days prior to the end of each calendar year quarter domestic manufacturers and importers of tobacco products will receive notification of:

(1) The national assessment;
§ 1463.9 Payment of assessments.

(a) Assessments under this subpart are imposed for the expenditures CCC has determined it will incur in the 2005 through 2014 calendar years. Except as provided in paragraph (c) of this section, payment of such assessments are due to CCC no later than the end of each calendar year quarter. If prior to 30 calendar days before the end of a calendar year quarter CCC has not notified an entity of the amount that is required to be remitted in that quarter, no interest will be assessed by CCC under paragraph (d) of this section until 30 calendar days have elapsed from the date CCC provided notification of the amount owed.

(b) Payments due under this subpart must be submitted to CCC by electronic fund transfer unless prior written approval has been obtained from CCC.

(c) The final two calendar year quarterly payments due to CCC under this part shall be due to CCC on September 30, 2014.

(d) Notwithstanding any other provision of this chapter, if CCC has not received payment of assessments determined to be owed at the end of a calendar year quarter, CCC will assess interest on such unpaid amount beginning on the first day of the calendar year quarter immediately following the end of such prior quarter. Such interest will be at the rate CCC assesses on delinquent debts in accordance with part 1403 of this title.

(e) With respect to funds placed in escrow that are refunded to the domestic manufacturer or importer of tobacco products due to the resolution of an appeal, interest will be paid on such amount from the date of receipt by CCC until the date of the refund. Such interest rate will be at the rate charged by the U.S. Treasury for CCC’s...
borrowing that is in effect on the date of receipt by CCC of such funds.

§ 1463.10 Civil penalties and criminal penalties.

(a) Any person who knowingly fails to provide information required to be filed under this subpart, or provides false information under this subpart, may be subject to the penalties prescribed in 15 U.S.C. 714m, 18 U.S.C. 1003, and such other civil and criminal statutes as the United States determines to be appropriate.

(b) In addition to any action that may be taken under paragraph (a) of this section, with respect to any person who knowingly fails to provide information required to be filed under this subpart, or that provides false information under this subpart, a person may be subject to assessment of a civil penalty by CCC. Such civil penalty will be imposed by CCC taking into account the severity of the action; whether the action is of a repetitive nature; and the disruption the action has caused with respect to other parties subject to this subpart. Any such civil penalty will not exceed two percent of the value of the kind of tobacco products manufactured or imported by such entity in the fiscal year in which the violation occurred.

§ 1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute by submitting such a request to the Executive Vice President, CCC, at 1400 Independence Avenue, SW., Room 4090-S, Washington DC 20250–0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

(b) The Executive Vice President shall assign a person to act as the hearing officer on behalf of CCC. The duty of the hearing officer will be to develop an administrative record that will provide the Executive Vice President, or a designee, with sufficient information to render a final determination on the matter in dispute. The hearing to be conducted by the hearing officer will be an informal hearing at which the appellant may present oral and written evidence in support of the appellant’s position. A copy of the rules of conduct that will be applicable to the proceeding will be provided to the appellant upon receipt of the appeal by CCC.

(c) With respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, the rules of conduct will provide that within 30 calendar days of receiving the final submission of material by the appellant, CCC will render a final administrative decision. In the event CCC has not rendered a decision by such date, all administrative remedies available to the appellant shall be deemed to be exhausted.

(d) Any domestic manufacturer or importer of tobacco products aggrieved by a determination made by CCC under this subpart may seek review of the determination upon the exhaustion of the administrative remedies provided by this part in the United States District Court for the District of Columbia, or for the district in which such importer or manufacturer has its principal place of business.

Subpart B—Tobacco Transition Payment Program

SOURCE: 70 FR 17159, Apr. 4, 2005, unless otherwise noted.

§ 1463.100 General.

(a) The Commodity Credit Corporation (CCC) will make payments to tobacco quota holders and tobacco producers as provided in this subpart with respect to farms for which a tobacco marketing quota had been established by the Farm Service Agency (FSA). To be eligible for a payment, such person must meet all provisions of this part; submit to CCC an application provided by CCC to enter into a contract for payment; and submit other information as may be required by CCC. Payments will be made by CCC annually over a 10-year period.

(b) As provided in this part, a tobacco quota holder or tobacco producer who is not the subject of an outstanding claim established by the United States may, under the terms and conditions

775
established by CCC and with the prior approval of CCC, enter into a successor in interest contract with another person or entity. Upon approval by CCC, all rights and obligations of the quota holder or producer, with respect to payments made by CCC under this part, will be terminated and transferred to the successor party.

(c) As provided in this part, a tobacco quota holder or tobacco producer who may, under the terms and conditions established by CCC, and with the prior approval of CCC, may assign the right to receive a payment to be made under this part by executing an assignment as provided in §1463.111.

(d) Notwithstanding any other provision of this chapter, the provisions of 7 CFR parts 723 and 1464 shall not be applicable to the 2005 and subsequent crops and the 2005 and subsequent marketing years.

§ 1463.101 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by FSA State and county committees (State and county committees).

(b) State and county committees and their representatives and employees have no authority to modify or waive provisions of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with 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 herein to a State or county committee shall preclude the Executive Vice President, CCC, or designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. Further, the Executive Vice-President, CCC, or designee, may modify any deadline in this subpart to the extent doing so is determined to be appropriate and consistent with the purposes of the program.

(e) A representative of CCC may execute a contract for a transition payment only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1463.102 Definitions.

The definitions in this section shall apply for all purposes of administering the Tobacco Transition Payment Program (TTPP) authorized by this subpart.

Act means the Fair and Equitable Tobacco Reform Act of 2004.

Actual marketings means tobacco that was disposed of in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons.

Actual undermarketings means the amount by which the effective quota is more than the amount of tobacco marketed.

Assignee means the person designated by a tobacco quota holder or tobacco producer on the correct CCC form to receive a payment to be made by CCC under this subpart.

Assignor means the owner of a farm, or a producer on a farm, who has been determined by CCC to be eligible for a payment under this subpart and who has elected to assign to another person on the correct CCC form, the payment to be made by CCC under this subpart.

Average production yield means, for each kind of tobacco, other than burley (type 31) and flue-cured (types 11–14), the average of the production of a kind of tobacco in a county, on a per-acre basis, for the 2001, 2002, and 2003 crop years. For quota holders only, if no records are available to provide the average production of a kind of tobacco in a county, the average yield will be the production yield established by the National Agricultural Statistical Service of the Department of Agriculture.
Commodity Credit Corporation, USDA

(NASS) for the 2002 marketing year for the applicable kind of tobacco.

Basic allotment means the factored allotment plus and minus permanent adjustments.

Basic quota means the factored quota plus permanent adjustments.

Base Quota Level (BQL) means the payment pounds as determined under this subpart.

Calendar year means the twelve-months from January 1 through December 31.

Claim means any amount of money determined by any Federal agency to be owed by a tobacco quota holder or a tobacco producer to the United States, or any agency or instrumentality thereof, that has been the subject of a completed debt collection activity that is in compliance with the Debt Collection Improvement Act of 1996.

Considered planted means tobacco that was planted but failed to be produced as a result of a natural disaster, as determined by CCC.

Contract means a Tobacco Transition Payment Quota Holder Contract, a Tobacco Transition Payment Producer Contract, a Tobacco Transition Payment Quota Holder Successor In Interest Contract, or a Tobacco Transition Payment Producer Successor In Interest Contract.

Contract payment means a payment made under a contract entered into under this subpart.

Dependent means an offspring child who is under 18 years of age.

Disaster lease means, as approved by FSA, a written transfer by lease under certain natural disaster conditions of flue-cured or burley tobacco when the transferring farm has suffered a loss of production due to drought, excessive rain, hail, wind, tornado, or other natural disasters. A disaster transfer of flue-cured tobacco must have occurred after June 30 and on or before November 15. A disaster transfer of burley tobacco must have occurred after July 1 and on or before February 16 of the following calendar year.

Effective allotment means the basic farm allotment plus or minus temporary adjustments.

Effective quota means the current year farm marketing quota plus or minus any temporary quota adjustments.

Effective undermarketings means the smaller of the actual undermarketings or the sum of the previous year’s basic quota plus pounds of quota temporarily transferred to the farm for the previous year.

Eligible quota holder means only a person who, as of October 22, 2004, has either a fee simple interest or life estate interest in the farm for which FSA established a farm basic marketing quota for the 2004 marketing year. An eligible quota holder does not include any other person who: claims a lien, security interest or other similar equitable interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; has a remainder interest or any other contingent interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; or who may have caused any such marketing quota to have been transferred to the farm.

Eligible tobacco producer means an owner, operator, landlord, tenant, or sharecropper who shared in the risk of producing tobacco on a farm where tobacco was produced, or considered planted, pursuant to a tobacco pound-age quota or acreage allotment assigned to the farm for the 2002, 2003 or 2004 marketing years and who otherwise meets the requirements in §1463.104.

Experimental tobacco means tobacco grown by or under the direction of a publicly-owned agricultural experiment station for experimental purposes.

Factored allotment means allotment that has been factored to equate it to the 2002 basic allotment level.

Factored quota means quota that has been factored to equate it to the 2002 basic quota level.

Family member means a parent, grandparent or other direct lineal ancestor; child or other direct lineal descendent; spouse; or sibling of a tobacco quota holder or tobacco producer.

Farm means a farm as defined in part 718 of this title.

Fiscal year means the twelve-month period from October 1 through September 30.
§ 1463.103 Eligible quota holder.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible quota holder, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible quota holder.

§ 1463.104 Eligible tobacco producer.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible tobacco producer, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title and the controlled substance provisions of part 718 of this title shall be applicable to payments made under this part to an eligible tobacco producer. However, the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible tobacco producer.

(c) For purposes of determining if an eligible tobacco producer has shared in the risk of producing a crop in the 2002, 2003, or 2004 crop years, CCC will consider evidence presented by a producer that includes, but is not limited to: written leases; contracts for the purchase of tobacco; crop insurance documents; or receipts for the purchase of tobacco.
Commodity Credit Corporation, USDA § 1463.105

Base quota levels for eligible quota holders.

(a) The BQL is determined separately for each kind of tobacco for each farm for which a 2004 basic marketing year quota was established under part 723 of this title. Any marketing quota assigned by FSA to a new farm in 2003 or 2004, other than through transfer from another farm, shall not be considered when determining the BQL.

(b) For burley tobacco quota holders BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.071295. (NOTE: The factor adjusts the 2004 basic quota to the 2002 basic quota level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owners.)

(c) For flue-cured tobacco quota holders the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.23457. (NOTE: The factor adjusts the 2004 basic quota to the 2002 level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder’s ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(d) For quota holders of all other kinds of tobacco the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The basic allotment established for the farm in 2002 multiplied by the county average production yield. The following NASS yields are to be used for any county without production:

   (i) Fire-cured (type 21)—1746 lbs.
   (ii) Fire-cured (types 22–23)—2676 lbs.
   (iii) Dark Air-cured (types 35–36)—2475 lbs.

   (iv) Virginia Sun-cured (type 37)—1502 lbs.
   (v) Cigar Filler/Binder (types 42–44, 54, 55)—2230 lbs.

(2) Quota holder BQL. The farm BQL multiplied by the quota holder’s ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(e)(1) CCC will divide the BQL for the farm between the parties to the agreement as CCC determines to be fair and equitable, taking into consideration the proportionate amounts of cropland sold if:

   (i) On or before October 22, 2004, the owner of a farm had entered into an agreement for the sale of all or a portion of a farm for which a farm marketing quota was established for the 2004 marketing year; and

   (ii) Such agreement had not been fulfilled or terminated prior to that date; and

   (iii) The parties to the agreement are unable to agree to the disposition of the contract payment to be made with respect to the farm.

(2) If, on or before October 22, 2004, the owner of a farm had entered into an agreement for the permanent transfer of all or a portion of a tobacco marketing quota and the transfer had not been completed by such date, the owner of the farm to which such quota was to be transferred shall be considered to be the owner of the marketing quota for the purposes of this subpart. The BQL’s for the transferring farm and the receiving farm will be adjusted to reflect this transfer.

(f) Any tobacco marketing quota preserved under part 1410 of this chapter as the result of the enrollment of a farm in the Conservation Reserve Program shall be included in the determination of the BQL of the farm.

§ 1463.106 Base quota levels for eligible tobacco producers.

(a) BQL is determined separately, for each of the years 2002, 2003 and 2004, for each kind of tobacco and for each farm for which a 2002 farm marketing quota had been established under part 723 of this title.

(b) The BQL for producers of burley tobacco is established as follows:
§ 1463.106

(1) The 2002-crop year BQL for burley producers is the 2002 effective quota pounds actually marketed, adjusted for disaster lease and transfer, and considered-planted undermarketings and overmarketings. The BQL is then multiplied by the producer’s share in the 2002 crop to determine the producer’s 2002 BQL. The adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are made as follows:

(i) Disaster-leased pounds are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm;

(ii) Considered-planted pounds are added to the farm’s actual marketings, and includes only undermarketings that were not part of the farm’s 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.12486 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for burley producers is the 2003 effective quota pounds actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm.

(ii) Considered-planted pounds are added to the farm’s actual marketings, and includes only undermarketings that were not part of the farm’s 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.071295 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm’s undermarketings by the transferring farm’s effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply the 2003 marketings remaining after Step 1 times 1.12486 (the 2003 BQL adjustment factor).</td>
</tr>
<tr>
<td>3</td>
<td>Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm’s 2003 BQL.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the sum from Step 3 times the producer’s share in the 2003 crop to determine the producer’s 2003 BQL.</td>
</tr>
</tbody>
</table>

(3) The 2004-crop year BQL for burley producers is the 2004 effective quota before disaster lease and transfer is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm’s undermarketings by the transferring farm’s effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply the 2004 effective quota remaining after Step 1 times 1.071295 (the 2004 BQL adjustment factor).</td>
</tr>
<tr>
<td>3</td>
<td>Multiply the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm’s 2004 BQL.</td>
</tr>
<tr>
<td>4</td>
<td>Add the effective quota from Step 2 to the undermarketings in Step 3 to determine the farm’s 2004 BQL.</td>
</tr>
<tr>
<td>5</td>
<td>Multiply the sum from Step 4 times the producer’s share in the 2004 crop to determine the producer’s 2004 BQL.</td>
</tr>
</tbody>
</table>

(c) The BQL for producers of flue-cured tobacco is established by year, as follows:

(1) The 2002-crop year BQL for flue-cured producers is the effective 2002 quota actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings. The BQL is then multiplied by the producer’s share in the 2002 crop to determine the producer’s 2002 BQL. Adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are calculated as follows:

(i) Disaster-leased pounds are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm.

(ii) Considered-planted pounds are added to the farm’s actual marketings, and include only undermarketings that
were not part of the farm's 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.10497 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for flue-cured producers is the 2003 effective quota actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm.

(ii) Considered-planted pounds are added to the farm's actual marketings, and includes only undermarketings that were in not part of the farm's 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.23457 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply the 2003 marketings remaining after Step 1 times 1.10497 (the 2003 BQL adjustment factor).</td>
</tr>
<tr>
<td>3</td>
<td>Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the sum from step 3 times the producer's share in the 2003 crop to determine the producer's 2003 BQL.</td>
</tr>
</tbody>
</table>

(3) The 2004-crop year BQL for flue-cured producers is the 2004 effective quota before disaster lease and transfer. The 2004 BQL is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply the 2004 effective quota remaining after Step 1 times 1.23457 (the 2004 BQL adjustment factor).</td>
</tr>
<tr>
<td>3</td>
<td>Add the undermarketings from Step 1 to the undermarketings in Step 2 to determine the farm 2004 BQL.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the sum from step 3 times the producer's share in the 2004 crop to determine the producer's 2004 BQL.</td>
</tr>
</tbody>
</table>

(d) The BQL for producers of cigar filler and binder tobacco is established by years, as follows:

(1) The 2002-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply any 2002 special tobacco combination acres times the 2002-equivalence factor of 1.000.</td>
</tr>
<tr>
<td>3</td>
<td>Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2002 farm special tobacco combination pounds total.</td>
</tr>
<tr>
<td>4</td>
<td>Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.</td>
</tr>
<tr>
<td>5</td>
<td>Multiply the sum from Step 4 times the producer's share in the 2002 crop to get the producer 2002 BQL.</td>
</tr>
</tbody>
</table>

(2) The 2003-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2003 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply any 2003 special tobacco combination acres times the 2003 BQL adjustment factor of 0.8929.</td>
</tr>
</tbody>
</table>
Step | Calculation
--- | ---
3 | Multiply the sum from Step 2 times the farm’s average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total.
4 | Add the sum from Step 1 to the sum from Step 3 to get the 2003 farm BQL total.
5 | Multiply the sum from Step 4 times the producer’s share in the 2003 crop to get the producer 2003 BQL.

(3) The 2004-crop year BQL for cigar-filler and binder tobaccos is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2002 farm’s basic allotment times the farm’s average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply any 2004 special tobacco combination acres times the 2004 BQL adjustment factor of 0.9398.</td>
</tr>
<tr>
<td>3</td>
<td>Multiply the sum from Step 2 times the farm’s average yield for 2001, 2002, and 2004 to get the 2003 farm special tobacco combination pounds total.</td>
</tr>
<tr>
<td>4</td>
<td>Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.</td>
</tr>
<tr>
<td>5</td>
<td>Multiply the sum from Step 4 times the producer’s share in the 2004 crop to get the producer 2004 BQL.</td>
</tr>
</tbody>
</table>

(e) The BQL’s for producers of all kinds of tobacco other than burley, flue-cured and cigar filler and binder, are established by year, as follows.

(1) The 2002-crop year BQL’s for these kinds of tobaccos are calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2002 farm’s basic allotment times the farm’s average yield for 2001, 2002, and 2003 to get the 2002 farm base pounds total.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply any 2002 special tobacco combination acres times the farm’s average yield for 2001, 2002, and 2003 to get the 2002 special tobacco combinations pounds total.</td>
</tr>
<tr>
<td>3</td>
<td>Add the sum from Step 1 to the sum from Step 2.</td>
</tr>
</tbody>
</table>
| 4 | Multiply any 2002 acres leased to or from the farm times the farm’s average yield for 2001, 2002, and 2003 to get the 2002 lease pounds total. Then, to the sum from either:
  (i) Step 3, add pounds leased to the farm to get the farm 2002 BQL total
  (ii) Step 3, subtract pounds leased from the farm to get the farm 2002 BQL total. |
| 5 | Multiply the result from Step 4 times the producer’s share in the 2002 crop to get the producer 2002 BQL. |

(2) The 2003-crop year BQL’s for these kinds of tobaccos are calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2002 farm’s basic allotment times the farm’s average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.</td>
</tr>
</tbody>
</table>
| 2 | Multiply any 2003 special tobacco combinations acres times the applicable 2003 BQL adjustment factor:
  (i) Fire-cured (type 21)—1.0000
  (ii) Fire-cured (types 22–23)—980392
  (iii) Dark Air-cured (35–36)—952381
  (iv) Virginia Sun-cured (type 37) 1.0000 |
| 3 | Multiply the sum from Step 2 times the farm’s average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total. |
| 4 | Add the sum from Step 1 to the sum from Step 3. |
| 5 | Multiply any 2003 acres leased to or from the farm times the applicable 2003 BQL adjustment factor:
  (i) Fire-cured (type 21) 1.0000
  (ii) Fire-cured (types 22–23)—980392
  (iii) Dark Air-cured (35–36)—952381
  (iv) Virginia Sun-cured (type 37) 1.0000 |
| 6 | Multiply the sum from Step 5 times the farm’s average yield for 2001, 2002, and 2003 to get the 2003 lease pounds total. |
| 7 | To the sum from Step 4 either:
  (i) Add pounds from Step 6 leased to the farm to get the farm 2003 BQL total
  (ii) Subtract pounds from Step 6 leased from the farm to get the farm 2003 BQL total. |
| 8 | Multiply the sum from Step 7 times the producer’s share in the 2003 crop to get the producer 2003 BQL total. |
(3) The 2004-crop year BQL’s for these kinds of tobaccos are calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Multiply the 2002 farm’s basic allotment times the farm’s average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply any 2004 special tobacco combinations acres times the applicable 2004 BQL adjustment factor:</td>
</tr>
<tr>
<td></td>
<td>(i) Fire-cured (type 21) 1.0000</td>
</tr>
<tr>
<td></td>
<td>(ii) Fire-cured (types 22–23)—951837</td>
</tr>
<tr>
<td></td>
<td>(iii) Dark Air-cured (35–36)—94264</td>
</tr>
<tr>
<td></td>
<td>(iv) Virginia Sun-cured (type 37) 1.0000</td>
</tr>
<tr>
<td>3</td>
<td>Multiply the sum from Step 2 times the farm’s average yield for 2001, 2002, and 2003 to get the 2004 farm special tobacco combination pounds total.</td>
</tr>
<tr>
<td>4</td>
<td>Add the sum from Step 1 to the sum from Step 3.</td>
</tr>
<tr>
<td>5</td>
<td>Multiply any 2004 acres leased times the applicable 2004 BQL adjustment factor:</td>
</tr>
<tr>
<td></td>
<td>(i) Fire-cured (type 21) 1.0000</td>
</tr>
<tr>
<td></td>
<td>(ii) Fire-cured (types 22–23)—951837</td>
</tr>
<tr>
<td></td>
<td>(iii) Dark Air-cured (35–36)—50464</td>
</tr>
<tr>
<td></td>
<td>(iv) Virginia Sun-cured (type 37) 1.0000</td>
</tr>
<tr>
<td>6</td>
<td>Multiply the sum from Step 5 times the farm’s average yield for 2001, 2002, and 2003 to get the 2004 lease pounds total.</td>
</tr>
<tr>
<td>7</td>
<td>To the sum from Step 4 either:</td>
</tr>
<tr>
<td></td>
<td>(i) Add pounds from Step 6 leased to the farm to get the farm 2004 BQL total</td>
</tr>
<tr>
<td></td>
<td>(ii) Subtract pounds from Step 6 leased from the farm to get the farm 2004 BQL total.</td>
</tr>
<tr>
<td>8</td>
<td>Multiply the sum from Step 7 times the producer’s share in the 2004 crop to get the producer 2004 BQL total.</td>
</tr>
</tbody>
</table>

§1463.107 Payment to eligible quota holders.

(a) The total amount of contract payments that may be made to an eligible quota holder shall be the product obtained by multiplying:

$7.00 per pound × the BQL for the quota holder as determined under §1463.105 for each kind of tobacco

(b) During each of the fiscal years 2005 through 2014, CCC will make a payment to each eligible quota holder in an amount equal to 10 percent of the total amount due under a contract entered into under this subpart, except that in the case an application was filed after June 17, 2005, the applicant will receive only the TTPP payments that have not been made as of the date the contract is approved. However, in order for the contract participant to receive the 2005 TTPP payment an application to enter into a TTPP contract must be filed no later than June 17, 2005. CCC may, in its discretion, extend any deadline set forth in this paragraph. However, CCC will make the FY 2005 payment between June and September of 2005, and subsequent payments will be made in January, to the extent practicable, of each FY.

§1463.108 Payment to eligible tobacco producers.

(a) Subject to paragraph (b) of this section, the total amount of contract payments that may be made to an eligible tobacco producer shall be the product obtained by multiplying:

$3.00 per pound × the BQL for the producer determined under §1463.106 for each kind of tobacco

(b) Payments to an eligible producer shall be equal to:

(1) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in all of the 2002, 2003, and 2004 marketing years, 100 percent of the rate specified in paragraph (a) of this section;

(2) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in any two of the 2002, 2003, and 2004 marketing years, 2/3 of the rate specified in paragraph (a) of this section; and

(3) For an eligible producer that produced tobacco that was marketed, or considered by CCC as planted under a marketing quota in any one of the 2002, 2003, and 2004 marketing years, 1/3 of the rate specified in paragraph (a) of this section.
§ 1463.109 Contracts.

(a) CCC will enter into a contract with eligible tobacco quota holders and producers. To the extent a person has filed such a contract with CCC, but a final administrative decision has not been made with respect to such person's status as an eligible quota holder or tobacco producer prior to the final enrollment date, CCC will enter into such a contract only upon the issuance of a final determination of eligibility and the passing of any deadline for any administrative appeal under parts 780 and 11 of this title.

(b)(1) If contracts or other written claims are provided to CCC by June 3, 2005, by two or more persons with respect to the same tobacco BQL used to calculate a program payment, CCC will not issue such payment until CCC has determined the eligibility status of each claimant.

(2) If CCC has made a payment to a person after June 3, 2005, a person who is not an eligible holder or producer, as identified on FSA records, for such farm, or claims to be an eligible tobacco holder or producer and submits a contract or other written claim with CCC for the same quota used to issue the initial payment, CCC will issue no further payments for such farm until CCC has determined the eligibility status of each person who has submitted a contract or other written claim for such farm and the occurrence of the repayment of the initial payment made by CCC.

§ 1463.110 Misrepresentation and scheme or device.

A person must refund all payments received on all contracts entered into under this subpart, plus interest as determined in accordance with part 1403 of this chapter, and pay to CCC liquidated damages as specified in the contract, if CCC determines the person has:

(a) Erroneously represented any fact affecting a program determination made in accordance with this subpart;

(b) Adopted any scheme or device that tends to defeat the purpose of the program; or

(c) Made any fraudulent representation affecting a program determination made in accordance with this subpart.

§ 1463.111 Offsets and assignments.

(a) TTPP payments made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the tobacco quota, tobacco marketing allotment, or the farm for which a tobacco quota had been established under part 723 of this title by any creditor or any other person.

(b) The provisions of part 1404 of this title shall not apply to this part.

(c) A quota holder or tobacco producer who is eligible to receive a payment under this part may assign a payment, or a portion thereof, to be made under this part to another person using the correct CCC form. Such an assignment will become effective upon approval by CCC. In order to provide for the orderly issuance of payments under this part, CCC may limit, in its sole discretion, the number of assignments that may be made with respect to a contract.

(d)(1) CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. Unless there is consideration for such contract in an amount equal to or greater than the...
Commodity Credit Corporation, USDA

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.112 Successor in interest contracts.

(a) A quota holder or tobacco producer who is eligible to receive a payment under this part, and for whom a claim has not been established by the United States, may enter into a successor in interest contract with another party using the correct CCC form. Such successor in interest contract will become effective upon approval by CCC, and will not include the 2005 payment. Only one such successor in interest contract may be entered into by a quota holder or tobacco producer with respect to a farm for each kind of tobacco.

(b) Annually, CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. This discount rate will be determined as provided in §1463.111(d)(2). Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the successor in interest or contract, based on the discount rate established for such payments by CCC, CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner’s consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.112 Successor in interest contracts.

(a) A quota holder or tobacco producer who is eligible to receive a payment under this part, and for whom a claim has not been established by the United States, may enter into a successor in interest contract with another party using the correct CCC form. Such successor in interest contract will become effective upon approval by CCC, and will not include the 2005 payment. Only one such successor in interest contract may be entered into by a quota holder or tobacco producer with respect to a farm for each kind of tobacco.

(b) Annually, CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. This discount rate will be determined as provided in §1463.111(d)(2). Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the successor in interest or contract, based on the discount rate established for such payments by CCC, CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner’s consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(c) CCC will issue a payment, except the 2005 payment, to a successor party only if such party is otherwise in compliance with all other applicable regulations, which includes for successors to producer contracts only the wetlands and highly erodible land provisions of part 12 of this chapter. In accordance with part 1403 of this title, any claim owed by the successor party to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the assignee.

(f) CCC will report to the Internal Revenue Service any payment assigned under this section as income earned by the assignee.
§ 1463.114 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this subpart in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart C—Miscellaneous Provisions

§ 1463.201 Refunds of importer assessments.

Assessments paid on imported flue-cured or burley tobacco under sections 106A and 106B of the Agricultural Act of 1949 with respect to imports in the 2004 and prior marketing years may be refunded by CCC in accordance with the provisions of 7 CFR 1464.105 that were in effect prior to March 30, 2005, so long as such request for refunds are filed in accordance with such part no later than:

(a) August 1, 2005 for flue-cured tobacco; and
(b) November 1, 2005 for burley tobacco.

[70 FR 17159, Apr. 4, 2005]

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

Subpart A—General Provisions

Sec.
1465.1 Purposes and applicability.
1465.2 Administration.
1465.3 Definitions.
1465.4 National priorities.
1465.5 Program requirements.
1465.6 AMA plan of operations.
1465.7 Conservation practices.
1465.8 Technical services provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts

1465.20 Applications for participation and selecting applications for contracting.
1465.21 Contract requirements.
1465.22 Conservation practice operation and maintenance.
1465.23 Payments.
1465.24 Contract modifications, extensions, and transfers of land.
1465.25 Contract violations and terminations.

Subpart C—General Administration

1465.30 Appeals.

1465.31 Compliance with regulatory measures.
1465.32 Access to operating unit.
1465.33 Equitable relief.
1465.34 Offsets and assignments.
1465.35 Misrepresentation and scheme or device.
1465.36 Environmental services credits for conservation improvements.

AUTHORITY: 7 U.S.C. 1524(b).

SOURCE: 74 FR 64595, Dec. 8, 2009, unless otherwise noted.

Subpart A—General Provisions

§ 1465.1 Purposes and applicability.

Through the Agricultural Management Assistance program (AMA), the Natural Resources Conservation Service (NRCS) provides financial assistance funds annually to producers in 16 statutorily designated States to: Construct or improve water management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices including soil erosion control, integrated pest management, or the transition to organic farming. AMA is applicable in Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

§ 1465.2 Administration.

(a) Administration and implementation of AMA’s conservation provisions for the Commodity Credit Corporation (CCC) is assigned to NRCS, using the funds, facilities, and authorities of the CCC. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC’s funds, facilities, and authorities, where applicable.

(b) NRCS will:

(1) Provide overall management and implementation leadership for AMA;
(2) Establish policies, procedures, priorities, and guidance for implementation;
(3) Establish payment limits;
(4) Determine eligible practices;
(5) Develop and approve AMA plans of operation and contracts with selected participants;
(6) Provide technical leadership for implementation, quality assurance, and evaluation of performance;
(7) Make AMA allocation and contract funding decisions; and
(8) Issue payments for completed conservation practices.
(c) No delegation in this part to lower organizational levels will preclude the Chief of NRCS from determining any issues arising under this part or from reversing or modifying any determination made under this part.

§ 1465.3 Definitions.
The following definitions apply to this part and all documents used in accordance with this part, unless specified otherwise:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural or forest-related products or livestock are produced. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management and production, forestry, or cultivation practices that are substantially separate from other operations.

AMA plan of operations (APO) means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to address the resource concerns and program purposes. The APO is part of the AMA contract.

Applicant means a person, legal entity, joint operation, or Indian Tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in AMA.

Beginning farmer or rancher means a person or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.
(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm or ranch is located.
(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “natural resource district,” “land conservation committee,” or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that achieve program purposes.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An AMA contract is an agreement for the transfer of assistance from USDA to the participant to share
in the costs of applying conservation practices.

*Designated conservationist* means an NRCS employee whom the State Conservationist has designated as responsible for AMA administration in a specific area.

*Historically underserved producer* means an eligible person, joint operation, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or non-industrial private forest landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in this section.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Indian land* is an inclusive term describing all lands held in trust by the United States for individual Indians or Tribes, or all lands, titles to which are held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and benefit of certain Tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian Tribes and the United States Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

*Joint operation* means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

*Legal entity* means, as defined in 7 CFR part 1400, an entity created under Federal or State law that: (1) Owns land or an agricultural commodity, product, or livestock; or (2) produces an agricultural commodity, product, or livestock.

*Lifespan* means the period of time in which a conservation practice should be operated and maintained and used for the intended purpose.

*Limited resource farmer or rancher* means:

1. A person with direct or indirect gross farm sales of not more than $155,200 in each of the previous 2 years (adjusted for inflation using the Prices Paid by Farmer Index as compiled by the National Agricultural Statistics Service), and

2. Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department data).

*Liquidated damages* means a sum of money stipulated in the AMA contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Livestock* means all animals produced on farms and ranches, as determined by the Chief.

*Natural Resources Conservation Service* is an agency of USDA which has responsibility for administering AMA using the funds, facilities, and authorities of the CCC.

*Nonindustrial private forest land* means rural land that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

*Operation and maintenance* means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its
original condition if one or more components fail.

Operation and maintenance (O&M) agreement means the document that, in conjunction with the APO, specifies the operation and maintenance responsibilities of the participants for conservation practices installed with AMA assistance.

Participant means a person, legal entity, joint operation, or Indian Tribe that is receiving payment or is responsible for implementing the terms and conditions of an AMA contract.

Payment means the financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for planning, design, materials, equipment, installation, labor, maintenance, management, or training, as well as the estimated income foregone by the producer for the designated conservation practices.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Producer means a person, legal entity, joint operation, or Indian Tribe that has an interest in the agricultural operation, according to 7 CFR part 1400, or who is engaged in agricultural production or forestry management.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by participants.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

1. Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and
2. Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants or in lieu of, or on behalf of NRCS.

§ 1465.4 National priorities.

(a) The Chief, with advice from State Conservationists, will identify national priorities to achieve the conservation objectives of AMA.
(b) National priorities will be used to guide annual funding allocations to States. (c) State Conservationists will use national priorities in conjunction with State and local priorities to prioritize and select AMA applications for funding.
(d) NRCS will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local levels to adapt the program to address emerging resource issues.

§ 1465.5 Program requirements.

(a) Participation in AMA is voluntary. The participant, in cooperation
§ 1465.5

with the local conservation district, applies for practice installation for the agricultural operation. NRCS provides payments through contracts to apply needed conservation practices within a time schedule specified in the APO.

(b) The Chief determines the funds available for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out AMA in consideration of national priorities established under §1465.4.

(c) To be eligible to participate in AMA, an applicant must:

(1) Own or operate an agricultural operation within an applicable State, as listed in 1465.1;

(2) Provide NRCS with written evidence of ownership or legal control for the life of the proposed contract, including the O&M agreement. An exception may be made by the Chief:

(i) In the case of land allotted by the BIA, Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; or

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant will provide NRCS with the written concurrence of the landowner in order to apply a structural practice(s);

(3) Submit an application form NRCS–CPA–1200;

(4) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor contract compliance;

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(6) With regard to contracts with Indian Tribes or Indians represented by the BIA, payments if a BIA or Tribal official certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made by social security or tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The BIA or Tribal entity must also provide, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation practice implementation.

(7) Supply other information, as required by NRCS, to determine payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income;

(8) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other AMA contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of §1465.25;

(9) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment;

(10) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party;

(11) Develop and agree to comply with an APO and O&M agreement, as described in §1465.3; and


(d) Land may only be considered for enrollment in AMA if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is a working component of the participant's agricultural and forestry operation; and

(ii) The participant has control of the land for the term of the contract; and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

7 CFR Ch. XIV (1–1–14 Edition)
(3) The land is Indian land.

§ 1465.6 AMA plan of operations.

(a) All conservation practices in the APO must be approved by NRCS and developed and carried out in accordance with the applicable NRCS technical guidance.

(b) The participant is responsible for implementing the APO.

(c) The APO must include:

(1) A description of the participant’s specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant’s conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation system, including conservation planning, design, or installation activities to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(d) An APO may be modified in accordance with §1465.24.

§ 1465.7 Conservation practices.

(a) The State Conservationist will determine the conservation practices eligible for AMA payments. To be considered eligible conservation practices, the practices must meet the purposes of the AMA as set out in §1465.1. A list of eligible practices will be available to the public.

(b) The APO includes the schedule of operations, activities, and payment rates of the practices needed to solve identified natural resource concerns.

§ 1465.8 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, local agencies, Indian Tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; and information, education, and training for producers, and related technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving AMA payments.

Subpart B—Contracts

§ 1465.20 Applications for participation and selecting applications for contracting.

(a) Any producer who has eligible land may submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation will file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance, national priorities, and the State-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist will develop ranking criteria and a ranking process to select applications, taking into account national, State, Tribal, and local priorities.

(d) The State Conservationist, or designated conservationist, using a locally-led process will evaluate, rank, and select applications for contracting based on the State-developed ranking criteria and ranking process.

(e) The State Conservationist, or designated conservationist, will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

§ 1465.21 Contract requirements.

(a) In order for a participant to receive payments, the participant will
enter into a contract agreeing to implement one or more eligible conservation practices. Costs for technical services may be included in the contract.

(b) An AMA contract will:

(1) Encompass all portions of an agricultural operation receiving AMA assistance;

(2) Have a minimum duration of one year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions required by law or statute, including participant requirements to:

(i) Not conduct any practices on the agricultural operation that would tend to defeat the purposes of the contract according to §1465.25;

(ii) Refund any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the contract, consistent with the provisions of §1465.25;

(iii) Refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the AMA contract’s conservation practices, consistent with the provisions of §1465.24; and

(iv) Supply information as required by NRCS to determine compliance with the contract and requirements of AMA.

(4) Specify the participant’s requirements for operation and maintenance of the applied conservation practices consistent with the provisions of §1465.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply the practice(s) according to the schedule set out in the APO.

§ 1465.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the O&M agreement that addresses the operation and maintenance of the conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.

(c) NRCS may periodically inspect the conservation practice(s) during the contract duration to ensure that operation and maintenance requirements are being carried out, and that the conservation practice is fulfilling its intended objectives.

(d) Conservation practices installed before the contract execution, but included in the contract to obtain the environmental benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

(f) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the conservation practice, at the rates established in accordance with §1465.23, provided such payments do not exceed the payment limitation requirements as set forth in §1465.23.

§ 1465.23 Payments.

(a) The Federal share of payments to a participant will be:

(1) Up to 75 percent of the estimated incurred cost or 100 percent of the estimated income foregone of an eligible practice, except as provided in (a)(2) of this section.

(2) In the case of historically underserved producers, the payment rate will be the applicable rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated incurred costs or estimated income foregone.

(3) In no instance will the total financial contributions for an eligible practice from other sources exceed 100 percent of the estimated incurred cost of the practice.
(b) Participants may contribute their portion of the estimated costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the NRCS standard and specifications for the practice being installed.

(c) Payments for practices applied prior to application or contract approval—

(1) Payments will not be made to a participant for a conservation practice that was applied prior to application for the program.

(2) Payments will not be made to a participant for a conservation practice that was initiated or implemented prior to contract approval, unless the participant obtained a waiver from the State Conservationist, or designated conservationist, prior to practice implementation.

(d) The total amount of payments paid to a person or legal entity under this part may not exceed $50,000 for any fiscal year.

(e) For purposes of applying the payment limitations provided for in this section, NRCS will use the provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility.

(f) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice on the same land under any other conservation program administered by USDA.

(g) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before NRCS will approve any payment.

(h) Subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs.

§ 1465.24 Contract modifications, extensions, and transfers of land.

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the APO is revised in accordance with NRCS requirements, and the designated conservationist approves the modified contract.

(b) It is the participant’s responsibility to notify NRCS when he or she either anticipates the voluntary or involuntary loss of control of the land.

(c) The participant and NRCS may mutually agree to transfer a contract to another party.

(1) To receive an AMA payment, the transferee must be determined by NRCS to be eligible to participate in AMA and will assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) With respect to any and all payment owed to participants who wish to transfer ownership or control of land subject to a contract, the division of payment will be determined by the original party and the party’s successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(d) NRCS may require a participant to refund all or a portion of any assistance earned under AMA if the participant sells or loses control of the land under an AMA contract, and the successor in interest is not eligible or refuses to accept future payments to participate in the AMA or refuses to assume responsibility under the contract.

(e) The contract participants will be jointly and severally responsible for refunding the payments with applicable interest pursuant to paragraph (d) of this section.

§ 1465.25 Contract violations and termination.

(a) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or other documents incorporated into the contract, NRCS will give the participant notice and 60 days, unless otherwise determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the AMA contract.
(b) Notwithstanding the provisions of (a) of this section, a contract termination will be effective immediately upon a determination by the State Conservationist that the participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of §1465.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract and refund all or part of the payments received, plus interest. Participants violating AMA contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) The State Conservationist may require only a partial refund of the payments received if the State Conservationist determines that a previously installed conservation practice can function independently and is not affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(2) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract and pay such liquidated damages as prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages based on NRCS’ determination that termination is in the public interest.

(iii) In carrying out NRCS’ role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1465.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under AMA in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits;
(2) Funding allocations;
(3) Eligible conservation practices; and
(4) Other matters of general applicability, including:
   (i) Technical standards and formulas;
   (ii) Denial of assistance due to lack of funds or authority; or
   (iii) Science-based formulas and criteria.

§ 1465.31 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant’s performance under the contract.

§ 1465.32 Access to operating unit.

Any authorized NRCS representative will have the right to enter an operating unit or tract for the purpose of determining eligibility and for ascertaining the accuracy of any representations related to contracts and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the contracts, including the APO and O&M agreement; and collect information necessary to evaluate the conservation practice performance as specified in the contracts.
The NRCS representative will make an effort to contact the participant prior to exercising this provision.

§ 1465.33 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635, section 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If a participant has been found in violation of a provision of the AMA contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635, section 635.4.

§ 1465.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof 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 crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.

(b) AMA participants may assign any payments in accordance with 7 CFR part 1404.

§ 1465.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting an AMA determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments plus interest, as determined in accordance with 7 CFR part 1403.

(b) A participant will refund to NRCS all payments, plus interest, as determined by NRCS with respect to all NRCS contracts to which they are a party if they are determined to have knowingly:

1. Adopted any scheme or device that tends to defeat the purpose of AMA;
2. Made any fraudulent representation;
3. Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(c) Where paragraph (a) or (b) of this section applies, the participant’s interest in all contracts will be terminated. In accordance with §1465.25(c), NRCS may determine the producer ineligible for future funding from any NRCS conservation programs.

§ 1465.36 Environmental services credits for conservation improvements.

NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through AMA, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an AMA contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance requirements for AMA-funded improvements are met, consistent with §1465.21 and §1465.22. Where activities may impact the land under an AMA contract, participants are highly encouraged to request an operation and maintenance compatibility determination prior to entering into any credit agreements. The AMA conservation program contract may be modified in accordance with policies outlined in §1465.24 provided the modifications meet AMA purposes and are in compliance with this part.
§ 1466.1 Applicability.
(a) The purposes of the Environmental Quality Incentives Program (EQIP) are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits. Through EQIP, the Natural Resources Conservation Service (NRCS) provides assistance to eligible farmers and ranchers to address soil, water, and air quality, wildlife habitat, surface and groundwater conservation, energy conservation, and related natural resource concerns. EQIP’s financial and technical assistance helps producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. The purposes of the program are achieved by planning and implementing conservation practices on eligible land.

(b) EQIP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1466.2 Administration.
(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this Part, it also refers to the CCC’s funds, facilities, and authorities where applicable.

(b) NRCS supports “locally led conservation” by using State Technical Committees at the State level and local working groups at the county or parish level to advise NRCS on issues relating to the EQIP implementation such as:

(1) Identification of priority resource concerns;
(2) Identification of which conservation practices should be eligible for financial assistance; and
(3) Establishment of payment rates.

(c) No delegation in this Part to lower organizational levels shall preclude the Chief from making any determinations under this Part, or from reversing or modifying any determination made under this Part.

(d) NRCS may enter into agreements with other Federal or State agencies, Indian tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this Part.

§ 1466.3 Definitions.
The following definitions will apply to this Part and all documents issued in accordance with this Part, unless specified otherwise:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural and forest-related products, or
livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

_Agricultural operation_ means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

_Animal waste management facility_ means a structural conservation practice, implemented in the context of a Comprehensive Nutrient Management Plan and consistent with the Field Office Technical Guide, which is used for storing, treating, or handling animal waste or byproducts, such as animal carcasses.

_Applicant_ means a person, legal entity, joint operation, or tribe that has an interest in an agricultural operation, as defined in part 1400 of this chapter, who has requested in writing to participate in EQIP.

_At-risk species_ means any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, to need direct intervention to halt its population decline.

_Beginning Farmer or Rancher_ means a person or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

_Chief_ means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

_Comprehensive Nutrient Management Plan (CNMP)_ means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

_Conservation district_ means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” “natural resource district,” or similar name.
Conservation Innovation Grants means competitive grants made under EQIP to individuals and governmental and non-governmental organizations to stimulate and transfer innovative technologies and approaches, to leverage Federal funds, and to enhance and protect the environment, in conjunction with agricultural production and forest management.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management, and other plans determined acceptable by the Chief.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.

Cost-effectiveness means the least costly option for achieving a given set of conservation objectives.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for EQIP administration in a specific area.

EQIP plan of operations means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to address the priority resource concerns, optimize environmental benefits, and address program purposes as defined in §1466.1. The EQIP plan of operations is part of the EQIP contract.

Estimated income foregone means an estimate of the net income loss associated with the adoption of a conservation practice, including from a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice. This shall not include losses of income due to disaster or other events unrelated to the conservation practice.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan is intended to comply with Federal, State, tribal, and local laws, regulations, and permit requirements.

Historically underserved producer means an eligible person, joint operation, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian land means:
(1) Land held in trust by the United States for individual Indians or Indian tribes; or
(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or
(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian Tribes; or
(4) Land held in fee title by an Indian, Indian family or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
Integrated Pest Management means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

Joint operation means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law that:

1. Owns land or an agricultural commodity, product, or livestock; or
2. Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice should be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

1. A person with direct or indirect gross farm sales not more than $155,200 in each of the previous two years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and
2. Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the EQIP contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means all animals produced on farms or ranches, as determined by the Chief.

Livestock production means farm or ranch operations involving the production, growing, raising, or reproduction of livestock or livestock products.

Local Working Group means the advisory body as defined in part 610 of this title.

National measures mean measurable criteria identified by the Chief, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the national priorities and statutory requirements.

National Organic Program means the national program, administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.

National priorities means resource issues identified by the Chief, with advice from other Federal agencies and State Conservationists, which will be used to determine the distribution of EQIP funds and guide local EQIP implementation.

Natural Resources Conservation Service is an agency of the USDA, which has responsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Operation and maintenance (O&M) agreement means the document that, in conjunction with the EQIP plan of operations, specifies the operation and maintenance responsibilities of the participant for conservation practices installed with EQIP assistance.
Organic System Plan means a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The Organic System Plan includes all written plans that govern all aspects of agricultural production or handling.

Participant means a person, legal entity, joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of an EQIP contract.

Payment means financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: planning, design, materials, equipment, installation, labor, maintenance, management, or training, as well as the estimated income foregone by the producer for designated conservation practices.

Person means, as defined in part 1400 of this chapter, an individual, natural person, and does not include a legal entity.

Priority resource concern(s) means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee, as a priority for a State, geographic area, or watershed level.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to part 1400 of this chapter, or who is engaged in agricultural production or forestry management.

Regional Assistant Chief means the NRCS employee authorized to direct and supervise NRCS activities in an NRCS region.

Resource Concern means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementation of the conservation activities by producers.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Island Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants, in lieu of or on behalf of NRCS.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

§ 1466.4 National priorities.

(a) The following national priorities, consistent with statutory resource concerns that include soil, water, wildlife,
Commodity Credit Corporation, USDA § 1466.6

air quality, and related resource concerns, will be used in EQIP implementation:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total maximum daily loads (TMDLs) where available; the reduction of surface and groundwater contamination; and the reduction of contamination from agricultural point sources, such as concentrated animal feeding operations;

(2) Conservation of ground and surface water resources;

(3) Reduction of emissions, such as particulate matter, nitrogen oxides, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(4) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land; and

(5) Promotion of at-risk species habitat conservation.

(b) In consultation with other Federal agencies, NRCS will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local level to adapt the program to address emerging resource issues. NRCS will:

(1) Use the national priorities to guide the allocation of EQIP funds to the NRCS State offices,

(2) Use the national priorities in conjunction with State and local priorities to assist with prioritization and selection of EQIP applications, and

(3) Periodically review and update the national priorities utilizing input from the public and affected stakeholders to ensure that the program continues to address priority resource concerns.

§ 1466.6 State allocation and management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the State and local level. In order to optimize the overall environmental benefits over the program duration, the Chief will:

(a) Use an EQIP fund allocation formula that reflects national priorities and that uses available natural resource and resource concerns data to distribute funds to the State level. This procedure will be updated periodically to reflect adjustments to national priorities and information about resource concerns and program performance. The data used in the allocation formula will be updated as they become available.

(b) Provide a performance incentive to NRCS in States that demonstrate a high level of program accomplishment in implementing EQIP. The Chief shall consider factors such as strategically planning EQIP implementation, effectively addressing national priorities and measures, State and local resource concerns, the program delivery effectiveness, the use of TSPs, and the number of contracts with historically underserved producers.

(c) Establish State level EQIP performance goals based on national, regional, and State priorities.

(d) Ensure that national, State and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, payment schedules, fund allocation, and program achievements are made available to the public.

(e) Consult with other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with advice from the State Technical Committee and local working groups, to determine how funds will be used and how the program will be administered to achieve national priorities in each State.

(g) Utilize assessment, evaluation, and accountability procedures based on actual natural resource and environmental outcomes and results.

§ 1466.6 State allocation and management.

The State Conservationist will:

(a) Identify State priority resource concerns, with the advice of the State Technical Committee, which directly contribute toward meeting national priorities and measures, and will use NRCS’s accountability system and other accountability tools to establish local level goals and treatment objectives;
§ 1466.7

(b) Identify, as appropriate and necessary, designated conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas; and

(c) Use the following to determine how to manage EQIP and how to allocate funds within a State:

(1) The nature and extent of priority resource concerns at the State and local level;

(2) The availability of human resources, incentive programs, educational programs, and on-farm research programs from public, private, and Tribal sources, to assist with the activities related to the priority resource concerns;

(3) The existence of multi-county and/or multi-State collaborative efforts to address regional priority resource concerns;

(4) Program performance and results;

(5) The degree of difficulty that producers face in complying with environmental laws; and

(6) The presence of additional priority resource concerns and specialized farming operations, including but not limited to, specialty crop producers, organic producers, and small-scale farms.

§ 1466.7 Outreach activities.

NRCS will establish program outreach activities at the national, State, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders.

§ 1466.8 Program requirements.

(a) Program participation is voluntary. The applicant must develop an EQIP plan of operations for the agricultural or nonindustrial private forest land to be treated that serves as the basis for the EQIP contract. NRCS provides participants with technical assistance and payments to plan and apply needed conservation practices.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Have an interest in the agricultural operation as defined in part 1400 of this chapter;

(3) Have control of the land for the term of the proposed contract period;

(i) The Chief may determine that land administered by the Bureau of Indian Affairs (BIA), Indian land, or other such circumstances provides sufficient assurance of control,

(ii) If the applicant is a tenant of the land involved in agricultural production or forestry management, the applicant shall provide the Chief with the written concurrence of the landowner in order to apply a structural conservation practice,

(4) Submit an EQIP plan of operations or plan developed for the purposes of acquiring an air or water quality permit, provided these plans contain elements equivalent to those elements required by an EQIP plan of operations and are acceptable to the State Conservationist as being consistent with the purposes of the program;

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant’s status as a limited resource, beginning farmer or rancher, and payment eligibility as established by part 1400 of this chapter; and

(6) Provide a list of all members of the legal entity and embedded entities along with members’ tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(c) Eligible land includes agricultural land and nonindustrial private forest land, and other land on which agricultural products, livestock, or forest-related products are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental
areas included in the agricultural operation, and other types of agricultural land used for production of livestock. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land;
(2) Publicly owned land where:
   (i) The land is a working component of the participant’s agricultural and forestry operation, and
   (ii) The participant has control of the land for the term of the contract, and
   (iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or
(3) Indian land.

(d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands directly attributable to livestock production, as measured at the national level.

(e) NRCS will establish a national target to set aside five percent of EQIP funds for socially disadvantaged farmers or ranchers and an additional five percent of EQIP funds for beginning farmers or ranchers.

§ 1466.9 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable NRCS technical guidance.

(b) The participant is responsible for implementing the EQIP plan of operations.

(c) The EQIP plan of operations must include:

(1) A description of the participant’s specific conservation and environmental objectives to be achieved;
(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant’s conservation, natural resource, and environmental objectives;
(3) A description of one or more conservation practices in the conservation management system, including conservation planning, design, or installation activities, to be implemented to achieve the conservation and environmental objectives;
(4) A description of the schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and
(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(d) If an EQIP plan of operations includes an animal waste storage or treatment facility, the participant must agree to develop and implement a CNMP or demonstrate to the satisfaction of the designated conservationist that a CNMP has been implemented.

(e) If an EQIP plan of operations addresses forestland, the participant must develop and implement a forest management plan.

(f) A participant may receive assistance to implement an EQIP plan of operations for water conservation only if the assistance will facilitate a reduction in ground and surface water use on the agricultural operation, unless the producer is participating in a watershed-wide project, as approved by the State Conservationist, which will effectively conserve water in accordance with §1466.20.

Subpart B—Contracts and Payments

§ 1466.10 Conservation practices.

(a) NRCS will determine the conservation practices for which participants may receive program payments. A list of eligible practices will be available to the public.

(b) Payments will not be made to a participant for a conservation practice that either the applicant or another producer has applied prior to application for the program. Payments will not be made for a conservation practice that has been initiated or implemented prior to contract approval, unless a waiver was granted by the State Conservationist or designated conservationist prior to the practice implementation.

(c) A participant will be eligible for payments for water conservation and
§ 1466.11 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian Tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; and information; education; and training for producers.

(d) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving EQIP payments.

[74 FR 2313, Jan. 15, 2009]

§ 1466.20 Application for contracts and selecting applications.

(a) In evaluating EQIP applications, the State Conservationist or designated conservationist, with advice from the State Technical Committee or local working group, takes into account the following guidelines:

(1) Any producer who has eligible land may submit an application for participation in EQIP. Applications are accepted throughout the year. Producers who are members of a joint operation may file a single application for the joint operation.

(2) The State Conservationist, to the greatest extent practicable, will group applications of similar crop, forestry, and livestock operations for evaluation purposes.

(3) The State Conservationist will evaluate applications within each established grouping.

(b) In selecting EQIP applications, the State Conservationist or designated conservationist, with advice from the State Technical Committee or local working group, may establish ranking pools to address a specific resource concern, geographic area, or agricultural operation type or develop a ranking process to prioritize applications for funding that address national, State, and local priority resource concerns, taking into account the following guidelines:

(1) The State Conservationist or designated conservationist will periodically select the highest ranked applications for funding based on applicant eligibility, fund availability, and the NRCS ranking process. The State Conservationist or designated conservationist will rank all applications according to the following factors:

(i) The degree of cost-effectiveness of the proposed conservation practices;

(ii) The magnitude of the expected environmental benefits resulting from the conservation treatment and the priority of the resource concerns that have been identified at the local, State, and national levels;

(iii) How effectively and comprehensively the project addresses the designated resource concern or resource concerns;

(iv) Use of conservation practices that provide long-term environmental enhancements;

(v) Compliance with Federal, State, Tribal, or local regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation;

(vi) Willingness of the applicant to complete all conservation practices in an expedited manner;

(vii) The ability to improve existing conservation practices or systems, which are in place at the time the application is accepted, or that complete a conservation system;
Commodity Credit Corporation, USDA § 1466.21

(viii) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(2) For applications that include water conservation or irrigation efficiency practices, the State Conservationist will give priority to those applications where:

(i) Consistent with State law in which the producer’s eligible land is located, there is a reduction in water use in the agricultural operation, or where the producer agrees not to use any associated water savings to bring new land under irrigation production, other than incidental land needed for efficient operations.

(ii) A producer who brings new land under irrigated production may be excluded from this latter condition if the producer is participating in a watershed-wide project that will effectively conserve water. The State Conservationist will designate eligible watershed-wide projects that effectively conserve water, using the following criteria:

(A) The project area has a current, comprehensive water resource assessment;

(B) The project plan has demonstrated effective water conservation management strategies; and

(C) The project sponsors have consulted relevant State and local agencies.

(3) If the State Conservationist determines that the environmental values of two or more applications for payments are comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

(4) The ranking will not give preferential treatment to applications based on size of the operation.

(5) The ranking process will determine the order in which applications will be selected for funding. The approving authority for EQIP contracts will be the State Conservationist or designee, except that the approving authority for any EQIP contract greater than $150,000 and up to $300,000 will be the appropriate NRCS Regional Assistant Chief.

(6) The State Conservationist will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how the EQIP program is implemented in the State.

(74 FR 2313, Jan. 15, 2009)

§ 1466.21 Contract requirements.

(a) In order for a participant to receive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Technical services may be included in the contract.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, the operation and maintenance requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Be for a minimum duration of one year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not implement any practices within the agricultural or forestry operation that would defeat the program’s purposes;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the EQIP contract’s conservation practices, consistent with the provisions of § 1466.25;

(iv) Implement a comprehensive nutrient management plan when the EQIP contract includes an animal waste management facility;

(v) Implement a forest management plan when the EQIP plan of operations addresses nonindustrial private forest land;
(vi) Supply information as may be required by NRCS to determine compliance with the contract and program requirements;
(vii) Specify the participant’s responsibilities for operation and maintenance of the applied conservation practices, consistent with the provisions of §1466.22; and
(4) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must start at least one financially assisted practice within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start conservation practice within the first year of the contract, the participant can request a waiver from the State Conservationist.

(d) Each contract will be limited to no more than $300,000. The Chief may waive this contract limitation to allow up to $450,000 for projects of special environmental significance that include methane digesters, other innovative technologies, and projects that will result in significant environmental improvements. Projects of special environmental significance must meet the following criteria, as determined by the Chief:
(1) Site-specific evaluation documents have been completed, documenting that the project will have substantial positive impacts on critical resources in or near the project area (e.g., impaired water bodies, at-risk species, drinking water supplies, or air quality attainment);
(2) The project clearly addresses a national priority and State, Tribal, or local priority resource concerns, as applicable; and
(3) The project assists the participant in complying with Federal, State, and local regulatory requirements.

§1466.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the O&M agreement that addresses the operation and maintenance of conservation practices applied under the contract.
(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.
(c) Conservation practices installed before the contract execution, but included in the contract to obtain the environmental benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.
(d) NRCS may periodically inspect the conservation practice during the contract duration as specified in the O&M agreement to ensure that operation and maintenance requirements are being carried out, and that the conservation practice is fulfilling its intended objectives.
(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

§1466.23 Payment rates.

(a) The State Conservationist or designated conservationist will develop a list of conservation practices, eligible for payment under the program, which considers:
(1) The conservation practice cost-effectiveness, implementation efficiency, and innovation,
(2) The degree and effectiveness in treating priority resource concerns,
(3) The number of resource concerns the practice will address,
(4) The longevity of the practice’s environmental benefits,
(5) The conservation practice’s ability to assist producers in meeting regulatory requirements, and
(6) Other pertinent local considerations.
(b) Payment rates will be established by the State Conservationist or designated conservationist, with advice from the State Technical Committee and local working groups.
(c) Determining payment rates. (1) A payment to a producer for performing a practice may not exceed, as determined by the State or designated conservationist:
Commodity Credit Corporation, USDA

§ 1466.24

(i) 75 percent of the estimated costs incurred by implementing the conservation practice;
(ii) 100 percent of the estimated income foregone; or
(iii) Both conditions in paragraphs (c)(1)(i) and (ii) of this section, where a producer incurs costs in implementing a conservation practice and foregoes income related to that practice implementation.
(iv) When determining payments for income foregone, the State Conservationist may give higher priority to the following conservation practices:
(A) Residue management;
(B) Nutrient management;
(C) Air quality management;
(D) Invasive species management;
(E) Pollinator habitat development or improvement;
(F) Animal carcass management technology; or
(G) Pest management.
(2) Notwithstanding paragraph (c)(1)(ii) of this section, a farmer or rancher meeting the historically underserved producer designation in § 1466.3 may be awarded the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the incurred costs estimated for the conservation practice.
(3) The payments to a participant will be reduced proportionately below the rate established by the State Conservationist or designated conservationist, to the extent that total financial contributions for a conservation practice from other sources exceed 100 percent of the estimated costs incurred for implementing or performing the conservation practice.
(4) The State Conservationist shall provide payments for conservation practices on some or all of the operations of a producer related to organic production and the transition to organic production. Payments may not be made to cover the costs associated with organic certification or for practices that are eligible for cost-share payments under the National Organic Program (7 U.S.C. 6523).

§ 1466.24 EQIP payments.

(a) Except for contracts entered into prior to October 1, 2008, or as provided in paragraph (b) of this section, the total amount of payments paid to a person or legal entity under this Part may not exceed an aggregate of $300,000, directly or indirectly, for all contracts, including prior year contracts, entered into during any 6-year period. For the purpose of applying this requirement, the 6-year period will include those payments made in fiscal years 2009–2014. Payments received for technical assistance shall be excluded from this limitation.
(b) The Chief may waive the $300,000 payment limitation, allowing up to $450,000 per person or legal entity for projects of special environmental significance, as defined in § 1466.21(d).
(c) Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, may not exceed in aggregate $20,000 per year or $80,000 during any 6-year period.
(d) To determine eligibility for payments, NRCS will use the following criteria:
(1) The provisions in part 1400 of this chapter, Payment Limitation and Payment Eligibility, subparts A and G.
(2) States, political subdivisions, and entities thereof will not be considered to be persons or legal entities eligible for payment.
(3) To be eligible to receive an EQIP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members’ social security numbers and percentage interest.
§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the EQIP plan of operations is revised in accordance with NRCS requirements, and the contract is approved by the designated conservationist.

(b) It is the participant’s responsibility to notify NRCS when he/she either anticipates the voluntary or involuntary loss of control of the land covered by an EQIP contract.

(c) The participant and NRCS may agree to transfer a contract to another party.

(1) To receive an EQIP payment, the transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) If the transferee is ineligible or refuses to accept future payments, NRCS will terminate the contract and may require the transferor to refund and/or forfeit all payments received.

(d) NRCS may require a participant to refund all or a portion of any financial assistance earned under EQIP if the participant sells or loses control of the land covered by an EQIP contract and the new owner or controller is not....
Commodity Credit Corporation, USDA

eligible to participate in the program or refuses to assume responsibility under the contract.

(e) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the practice, at the rates established in accordance with §1466.23, provided such payments do not exceed the payment limitation requirements as set forth §1466.24.

[74 FR 2313, Jan. 15, 2009]

§1466.26 Contract violations and terminations.

(a) The State Conservationist may terminate, or by mutual consent with the parties, terminate the contract where:

(1) The parties to the contract are unable to comply with the terms of the contract as the result of conditions beyond their control;

(2) Termination of the contract would, as determined by the State Conservationist, be in the public interest; or

(3) A participant fails to correct a contract violation within the time period defined by NRCS.

(b) If a contract is terminated in accordance with the provisions of paragraphs (a)(1) and (a)(2) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or, in cases of hardship, where forces beyond the participant’s control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or documents incorporated by reference into the contract, NRCS shall give the participant a period of time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract in accordance with §1466.26(e).

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of §1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating EQIP contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(2) The State Conservationist will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case.

(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant’s control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

(f) The State Conservationist, in consultation with the State Technical Committee, may terminate a contract
§ 1466.27 Conservation Innovation Grants (CIG).

(a) Definitions. In addition to the terms defined in §1466.3 of this part, the following definitions shall be applicable to this section:

(1) EQIP eligible means any farming entity, land, and practice that meets the definitions of EQIP as defined in 7 CFR 1466.

(2) Grant agreement means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law, and substantial Federal involvement is not anticipated.

(3) Grant Review Board consists of the NRCS Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Review Board makes recommendations for grant awards to the Chief.

(4) Peer Review Panel means a panel consisting of Federal and non-Federal technical advisors who possess expertise in a discipline or disciplines deemed important to provide a technical evaluation of project proposals submitted under this notice.

(5) Project means the activities as defined within the scope of the grant agreement.

(6) Project Director means the individual responsible for the technical direction and management of the project as designated in the application.

(b) Purpose and scope—(1) Purpose. The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS will administer CIG in accordance with this section. Unless otherwise provided for in this section, the provisions of 7 CFR 3015 and related Departmental regulations will be used to administer grants under CIG.

(2) Geographic scope. Applications for CIG are accepted from the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) Program scope. Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in the FEDERAL REGISTER. In addition, at the Chief’s discretion, each State Conservationist may implement a separate State-level component of CIG.

(4) Program focus. Applications for CIG should demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund projects that promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides, or to the private sector. Technologies and approaches eligible for funding in a project’s geographic area through EQIP are not eligible for CIG funding except where the use of those technologies and approaches demonstrates clear innovation. The burden falls on the applicant to sufficiently describe the innovative features of the proposed technology or approach.

(5) Innovative conservation projects or activities. For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:
(i) Conservation adoption incentive systems, including market-based systems; or,
(ii) Promising conservation technologies, practices, systems, procedures, and approaches.
To be given priority consideration, the innovative project or activity:
(iii) Will have been studied sufficiently to indicate a good probability for success;
(iv) Demonstrates, tests, evaluates, or verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;
(v) Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;
(vi) Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and
(vii) Adapts conservation technology, management, or incentive systems to improve performance.
(c) Availability of funding. (1) CIG funding will be available for single-or multi-year projects. Funding for CIG will be announced in the FEDERAL REGISTER through a Request for Proposals (RFP). The Chief will determine the funding level for CIG on an annual basis. Funds for CIG are derived from funds made available for EQIP. The Chief may establish funding limits for individual grants.
(2) Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception regarding matching funds may be made for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for these projects may derive from in-kind contributions.
(3) CIG is designed to provide financial assistance to grantees. Procurement of any technical assistance required to carry out a project is the responsibility of the grantee. Technical oversight for grant projects will be provided by a Federal grant representative, who will be designated by NRCS.
(4) There are some costs that grantees may not cover using CIG funds, such as costs incurred prior to the effective date of the grant, entertainment costs, any indirect cost exceeding fifteen percent, or renovation or refurbishment of facilities. A detailed list of costs not allowed will be published in the Request for Proposals.
(d) Natural resource conservation concerns. CIG applications must describe the use of innovative approaches or technologies to address a natural resource conservation concern or concerns. The natural resource concerns for CIG will be identified by the Chief, and may change each year. The natural resource concerns will be published in the RFP.
(e) Eligibility information.—(1) Organization or individual eligibility. To be eligible, CIG applicants must be an Indian Tribe; State or local unit of government; non-governmental organization; or individual.
(2) Project eligibility. To be eligible, projects must involve landowners who meet the eligibility requirements of §1466.8(b)(1) through (3) of this part. Further, all agricultural producers receiving a direct or indirect payment through participation in a CIG project must meet those eligibility requirements.
(3) Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes. Up to 10 percent of the total funds available for CIG may be set-aside for applications from either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.
(f) Application and submission information. The CIG RFP will contain guidance on how to apply for the grants competition. CIG will be advertised through the FEDERAL REGISTER, the NRCS Web site, and grants.gov. Grant applications will be available on the NRCS Web site, or by contacting NRCS.
at the address provided in the RFP. CIG grant applications will consist of standard cover sheet and budget forms, in addition to a narrative project description and required legal declarations and certifications.

(g) Application review and grant awards. Complete applications will be evaluated by a peer review panel and scored based on the Criteria for Proposal Evaluation identified in the RFP. Scored applications will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief. Final award selections will be made by the Chief. Grant awards will be made by the NRCS National Office after selection of the grantee is made and after the grantee agrees to the terms and conditions of the NRCS Grant document.

(h) State component. (1) At the discretion of the Chief, each State Conservationist has the option of implementing a State-level CIG component. A State program will follow the requirements of this section, except for those features described in this paragraph (h).

(2) Funding availability, application, and submission information for State competitions will be announced through public notices (and on the State NRCS Web site), separately from the national program. The State component will emphasize projects that cover limited geographic areas, including individual farms, multi-county areas, or small watersheds.

(3) The State Conservationist will determine the funding level for the grants competition, with individual grants not to exceed $75,000.

(4) The State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

(5) Applications will be scored by the State Technical Committee, or a subcommittee thereof, based on the national Criteria for Proposal Evaluation published in the CIG RFP. Scored applications will be forwarded to the State Conservationist, who will make the award selections.

(6) In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in paragraph (c)(2) of this section, the State Conservationist in each participating State will determine if and how to provide additional special consideration to underserved groups.

(i) Grant agreement. The CCC, through NRCS, will use a grant agreement with selected grantees to document participation in CIG.

(j) Patents and inventions. Allocation of rights to patents and inventions shall be in accordance with USDA regulation 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

(k) Violations. A person found in violation of this section is subject to the provisions contained in 7 CFR part 3015 and related Departmental regulations.

[69 FR 16397, Mar. 29, 2004; 70 FR 1791, Jan. 11, 2005; 74 FR 2316, Jan. 15, 2009]

Subpart C—General Administration

SOURCE: 74 FR 2316, Jan. 15, 2009, unless otherwise noted.

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with parts 11 and 614 of this title. Determination in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation practices are not subject to appeal.
Commodity Credit Corporation, USDA § 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant’s performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to contract performance. Access shall include the right to provide technical assistance, determine eligibility, inspect any work undertaken under the contract, and collect information necessary to evaluate the conservation practice performance, specified in the contract. The NRCS representative shall make an effort to contact the participant prior to the exercising this provision.

§ 1466.33 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, but the participant believes that a good faith effort to comply was made, the participant may request equitable relief under §635.3 in chapter VI of this title.

(b) If, during the term of an EQIP contract, a participant has been found in violation of a provision of the EQIP contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under §635.4 in chapter VI of this title.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, joint venture, legal entity or tribe shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) EQIP participants may assign any payments in accordance with part 1404 of this chapter.

§ 1466.35 Misrepresentation and scheme or device.

(a) A person, joint venture, legal entity or tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this Part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination, shall refund to NRCS all payments, plus interest determined in accordance with 7 CFR...
§ 1466.36 Environmental credits for conservation improvements.

NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through EQIP, and environmental credits may be gained as a result of implementing activities compatible with the purposes of an EQIP contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for EQIP-funded improvements are met, consistent with §§1466.21 and 1466.22. Where activities may impact the land under an EQIP contract, participants are highly encouraged to request an O&M compatibility determination from NRCS prior to entering into any credit agreements.

PART 1467—WETLANDS RESERVE PROGRAM

Sec. 1467.1 Applicability.
1467.2 Administration.
1467.3 Definitions.
1467.4 Program requirements.
1467.5 Application procedures.
1467.6 Establishing priority for enrollment of properties in WRP.
1467.7 Enrollment process.
1467.8 Compensation for easements and 30-year contracts.
1467.9 Wetlands Reserve Enhancement Program.
1467.10 Cost-share payments.
1467.11 Easement participation requirements.
1467.12 The WRPO development.
1467.13 Modifications.
1467.14 Transfer of land.
1467.15 Violations and remedies.
1467.16 Payments not subject to claims.
1467.17 Assignments.
1467.18 Appeals.
1467.19 Scheme and device.
1467.20 Market-based conservation initiatives.

AUTHORITY: 16 U.S.C. 3837 et seq.

SOURCE: 74 FR 2328, Jan. 15, 2009, unless otherwise noted.

§ 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

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

§ 1467.2 Administration.

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

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part that is required by applicable law.

(c) The State Conservationist will seek advice from the State Technical Committee on the development of the geographic area rate caps of compensation for an easement, a priority ranking process, and related policy matters.

(d) NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS to carry out such delegated responsibilities.

(e) NRCS may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance.

(f) NRCS shall consult with the U.S. Department of the Interior’s Fish and Wildlife Service (FWS) at the local
Commodity Credit Corporation, USDA

§ 1467.3 Definitions.

The following definitions are applicable to this part:

30-year Contract means a contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Acreage Owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a Native Corporation, Tribe or the Bureau of Indian Affairs (BIA).

Activity means an action other than a conservation practice that is included in the WRP or restoration cost-share agreement, as applicable, and that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an easement, contract, or restoration cost-share agreement.

Agreement means the document that specifies the obligations and rights of NRCS and any person or legal entity who is participating in the program.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters; or sugarcane planted and produced in a State.

Beginning Farmer or Rancher means an individual or legal entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of a legal entity, and who will materially and substantially participate in the operation of the farm or ranch. In the case of an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located. In the case of a legal entity or joint operation, material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation district means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource
conservation district,” “natural resource district,” “land conservation committee,” or a similar name.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831–3836.

Contract means the legal document that specifies the obligations and rights of NRCS and any person or legal entity accepted to participate in the program. A WRP contract is an agreement for the transfer of assistance from NRCS to the participant for conducting the prescribed program implementation actions.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or to have the effect of, making the production of an agricultural commodity possible if such production would not have been possible but for such action; and before such action such land was wetland; and such land was neither highly erodible land nor highly erodible cropland.

Cost-share payment means the payment made by NRCS to a participant to carry out conservation practices and to achieve the protection of wetland functions and values, including necessary activities, as set forth in the Wetlands Reserve Plan of Operations (WRPO).

Easement means a reserved interest easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP, or the consideration paid to an Indian Tribe or tribal members for entering into 30-year contracts.

Easement Restoration Agreement means the agreement used to implement the Wetland Restoration Plan of Operations for projects enrolled through the permanent easement, 30-year easement, or 30-year contract enrollment options.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Historically Underserved Producer means a beginning, limited resource, or socially disadvantaged farmer or rancher.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Landowner means a person or legal entity having legal ownership of eligible land. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants. The term landowner includes trust holders of acreage owned by Indian Tribes.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Legal entity means an entity that is created under Federal or State law that owns land or an agricultural commodity; or produces an agricultural commodity.

Limited Resource Farmer or Rancher means a person with direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased to adjust for inflation using...
Commodity Credit Corporation, USDA

§ 1467.3

Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS), and who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using U.S. Department of Commerce data).

Maintenance means work performed to keep the enrolled area functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices on enrolled lands, as approved by NRCS.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, including when NRCS carries out program implementation using the funds, facilities, or authorities of the Commodity Credit Corporation (CCC).

Option agreement to purchase means the legal document that is the equivalent of a real estate option contract for purchasing land. The landowner signs the option agreement to purchase, which is authorization for NRCS to proceed with the easement acquisition process, and to incur costs for surveys, where applicable, title clearance and closing procedures on the easement. The option becomes a contract for sale and obligates CCC funding after it is executed by NRCS and transmitted to the landowner.

Participant means a person or legal entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an option to purchase agreement, 30-year contract, or restoration cost-share agreement, and the associated WRPO.

Person means a natural person, a legal entity, or an Indian Tribe, but does not include governments or their political subdivisions.

Prairie Pothole Region means the counties designated as part of the Prairie Pothole National Priority Area for the Conservation Reserve Program (CRP) as of June 18, 2008.

Private land means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this Part.

Restoration Cost-Share Agreement means the legal document that describes the rights and obligations of participants who have been accepted to participate in WRP restoration cost-share enrollment option that is used to implement conservation practices and activities to protect, restore, or enhance wetlands values and functions to achieve the purposes of the program. The restoration cost-share agreement is an agreement between NRCS and the participant to share in the costs of implementing the Wetland Restoration Plan of Operations.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudice because of their identity as a member of a group without regard to their individual qualities.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture (USDA) in a State pursuant to 16 U.S.C. 3861.

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:
§ 1467.4 Program requirements.

(a) General. (1) Under the WRP, NRCS may purchase conservation easements from, or enter into 30-year contracts or restoration cost-share agreements with, eligible landowners who voluntarily cooperate to restore, protect, or enhance wetlands on eligible private and Tribal lands. The 30-year contract enrollment option is only available to acreage owned by Indian Tribes.

(2) To participate in WRP, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. NRCS may provide cost-share assistance through a restoration cost-share agreement or an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. For easement transactions, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS, or other designee.

(b) Acreage limitations. (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired through the WRP.

(2) NRCS and FSA shall concur before a waiver of the 25 percent limit of this paragraph can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) Landowner eligibility. To be eligible to enroll in the WRP, a person, legal entity, or Indian Tribe must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at Subpart G of 7 CFR part 1400, and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) For easement applications, have been the landowner of such land for the 7-year period prior to the time the land is determined eligible for enrollment unless it is determined by the State Conservationist that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner;

(ii) The ownership change occurred due to foreclosure on the land and the
owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law; or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program, such as demonstration of status as a beginning farmer or rancher.

(3) Agree to provide such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) When a parcel of land that has been accepted for enrollment into the WRP is sold or transferred prior to the easement being perfected, the application or option agreement to purchase will be cancelled and acres will be removed from enrollment. If the new landowner wishes to continue enrollment, a new application must be filed so that all eligibility criteria may be examined and documented.

(e) Land eligibility. (1) Only private land or land owned by Indian Tribes may be considered for enrollment into WRP.

(2) NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

(3) Land shall only be considered eligible for enrollment in the WRP if NRCS determines, in consultation with the FWS, that:

(i) The enrollment of such land maximizes wildlife benefits and wetland values and functions;

(ii) Such land is:

(A) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands; or

(B) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, together with the adjacent land, where practicable, that is functionally dependent on the cropland or grassland; and

(iii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration.

(4) Land may be considered farmed wetland or converted wetland under paragraph (3)(i)(A) of this section if:

(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values; or

(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored.

(5) Land under paragraph (e)(3)(ii)(B) of this section may be considered for enrollment into 30-year easements if it meets the criteria under paragraph (e)(3) of this section, it is located in the Prairie Pothole Region as defined under §1467.3 of this part, and the size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(6) If land offered for enrollment is determined eligible under paragraph (e)(3) and (e)(5) of this section, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and:

(i) Is farmed wetland and adjoining lands enrolled in CRP, with the highest wetland functions and values, and is likely to return to production after it leaves CRP;

(ii) Is a riparian area along streams or other waterways that links or, after restoring the riparian area, will link wetlands which are protected by an
§ 1467.5 Application procedures.

(a) Application for participation. To apply for enrollment, a landowner must submit an Application for Participation in the WRP.

(b) Preliminary agency actions. By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities, such as the development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) Voluntary reduction in compensation. In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ 1467.6 Establishing priority for enrollment of properties in WRP.

(a) When evaluating easement, 30-year contract, or restoration cost-share agreement offers from landowners, the NRCS, with advice from the State Technical Committee, may consider:

(1) The conservation benefits of obtaining an easement, or other interest in the land;

(2) The cost effectiveness of each easement or other interest in eligible land, so as to maximize the environmental benefits per dollar expended;

(3) Whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of the easement program would be achieved on the land;

(5) The productivity of the land; and
(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS shall give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. The State Conservationist may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

(e)(1) The Chief will conduct an assessment during fiscal year 2008 and each subsequent fiscal year for the purpose of determining the interest and allocations for the Prairie Pothole Region to enroll land determined eligible under §1467.4(d)(5) of this part into 30-year easements. Annually, the Chief will provide specific instructions for the assessment in writing to the applicable State Conservationists.

(2) The Chief will make an adjustment to the allocation for an applicable State for a fiscal year, based on the results of the assessment conducted under paragraph (e)(1) of this section for the State during the previous fiscal year.

§1467.7 Enrollment process.

(a) Tentative Selection. Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) Effect of notice of tentative selection. The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in WRP, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land unless otherwise notified by the landowner.

(c) Acceptance and effect of offer of enrollment—(1) Easement. For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement compensation amount; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the option agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) Restoration cost-share agreement. For applications requesting enrollment through the restoration cost-share agreement option, a restoration cost-share agreement shall be presented by NRCS to the landowner, which will describe the enrolled area, the agreement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(d) 30-year contract. For applications requesting enrollment through the 30-year contract option, a 30-year contract shall be presented by NRCS to the landowner, which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the WRPO after the property has been enrolled.
document establishes the terms of enrollment consistent with the terms and conditions of this part, and identifies the:

(i) Scope of the agreement between NRCS and the landowner;
(ii) Basis for NRCS to obligate funds; and
(iii) Nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

(2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land as set forth under §1467.11;
(ii) Implementing a WRPO which provides for the restoration and protection of the functions and values of wetlands;
(iii) Recording the easement in accordance with applicable State law; and
(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner’s agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) Withdrawal of offer of enrollment

Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, sale of the land, risk of hazardous substance contamination, or other reasons. The offer of enrollment to the landowner shall be void if not executed by the landowner within the time specified.

74 FR 3273, Jan. 15, 2009, as amended at 74 FR 8286, June 2, 2009

§1467.8 Compensation for easements and 30-year contracts.

(a) Determination of easement payment rates. (1) Compensation for an easement under this part shall be made in cash in such amount as is agreed to and specified in the option agreement to purchase or 30-year contract.

(2) Payments for non-permanent easements or 30-year contracts shall be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS shall pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based on an area-wide market analysis or survey;
(ii) The geographic area rate cap determined under paragraph (a)(4) of this section; or
(iii) The landowner offer.

(4) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) Acceptance of offered easement compensation. (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional

822
compensation based on fair market value.

(2)(i) For easements or 30-year contracts valued at $500,000 or less, NRCS will provide compensation in up to 30 annual payments, as requested by the participant, as specified in the option agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than $500,000, the Secretary may provide compensation in at least 5, but not more than 30 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the option agreement to purchase, warranty easement deed, or 30-year contract between NRCS and the participant.

(c) Reimbursement of a landowner’s expenses. For completed easement conveyances, NRCS will reimburse participants for their fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as determined by NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse participants for reasonable expenses, if incurred.

(d) Tax implications of easement conveyances. Subject to applicable regulations of the Internal Revenue Service, a participant may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the participant. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(e) Per acre basis calculations. If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 1467.9 Wetlands Reserve Enhancement Program.

(a) Wetlands Reserve Enhancement Program (WREP). (1) The purpose of WREP is to target and leverage resources to address high priority wetlands protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes.

(2) Funding for WREP agreements will be announced in the Federal Register.

(i) The announcement will provide details on the priorities for funding, required level of partner matching funds, ranking criteria, level of available funding, and additional criteria as determined by the Chief.

(ii) The Chief will determine the funding level for WREP on an annual basis. Funds for WREP are derived from funds available for WRP.

(3) Proposals will be submitted to the State Conservationist of the State in which the majority of the project area resides.

(i) State Conservationists will evaluate proposals based on the ranking criteria established in the announcement and provide proposals recommended for funding to the Chief.

(ii) The Chief will evaluate proposals recommended for funding and make final funding selections, in accordance with ranking factors identified in the announcement.

(4) Selected proposals and associated funding will be provided to the State Conservationist to enter into WREP agreements with the eligible partner to carry out the project.

(b) Reserved Rights Pilot. (1) The Chief shall carry out a reserved rights pilot subject to the requirements established in this part.

(2) Under the reserved rights pilot, a landowner may reserve grazing rights in the warranty easement deed or 30-year contract, if the State Conservationist determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the easement or 30-year contract; and

(ii) Is consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established; and

(iii) Complies with a WRPO developed with NRCS.
(3) The State Conservationist will provide public notice of the availability of the reserved rights pilot and the reserved rights template deed or 30-year contract, approved by the Chief, to be used in the pilot.

(4) Compensation for easements or 30-year contracts entered into under the reserved rights pilot will be based on the method described in §1467.8 with the following exceptions:

(i) Section 1467.8(a)(3)(i) is adjusted to reduce the fair market value of the land by an amount equal to the value of the retained grazing rights as determined by a Uniform Standards for Professional Appraisal Practices appraisal or a market survey; and

(ii) Section 1467.8(a)(3)(ii) is adjusted to reduce the geographic area rate cap determined as described in §1467.8(a)(4) by an amount equal to the value of the retained grazing rights.

§1467.10 Cost-share payments.

(a) NRCS may share the cost with participants of implementing the WRPO on the enrolled land. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement, 30-year contract, or restoration cost-share agreement, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs.

(3) The total amount of payments that a person or legal entity may receive, directly or indirectly, for one or more restoration cost-share agreements, for any year, may not exceed $50,000.

(b) Cost-share payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO. Identified conservation practices or activities may be implemented by the participant, NRCS, or other NRCS designee.

(c) Cost-share payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional cost-share assistance from other public or private organizations as long as the conservation practices or activities funded are in compliance with this part. In no event shall the participant receive an amount that exceeds 100 percent of the total actual cost of the restoration.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§1467.11 Easement and 30-year contract participation requirements.

(a) Easement requirements. (1) To enroll land in WRP through the permanent or non-permanent easement option, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of its term, the easement shall require, at a minimum, that the participant, and the participant’s heirs, successors and assigns, shall, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement shall grant to the United States, through NRCS:

(i) A right of access to the easement area;

(ii) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection
Commodity Credit Corporation, USDA § 1467.12

and enhancement of the wetland resources for which the easement was established;

(iii) All rights, title and interest in the easement area; and

(iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.

(3) The participant shall convey title to the easement in a manner that is acceptable to NRCS. The participant shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(4) The participant shall:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated contract or agreement;

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the FSA;

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(v) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any participant responsibilities on the easement area; and

(vi) Agree that each person or legal entity that is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) 30-year contract requirements. (1) To enroll land in WRP through the 30-year contract option, a landowner shall enter into a contract with NRCS. The contract shall require that the enrolled area be maintained in accordance with WRP goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, and management of the wetland and other land functions and values.

(2) For the 30-year duration, the contract shall require, at a minimum, that the participant, and the participant’s heirs, successors and assigns, shall, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the WRPO. In addition, the contract shall grant to NRCS:

(i) A right of access to the contract area;

(ii) The right to permit compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the contract was established; and

(iii) The right to restore, protect, enhance, maintain, and manage activities on the enrolled area.

(3) The participant shall:

(i) Comply with the terms of the contract;

(ii) Comply with all terms and conditions of any associated agreement;

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the enrolled area in accordance with the terms of the contract and related agreements;

(iv) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any participant responsibilities on the enrolled area;

(v) Agree that each person or legal entity that is subject to the contract shall be jointly and severally responsible for compliance with the contract and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§ 1467.12 The WRPO development.

(a) The development of the WRPO will be made through the local NRCS representative, in consultation with the State Technical Committee, with consideration of site-specific technical
§ 1467.13 Modifications.

(a) Easements. (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the participant. The Chief will consult with FWS and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement, which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired or when adverse impacts will be mitigated by enrollment and restoration of other lands that provide greater wetland functions and values at no additional cost to the government.

(4) Modifications must result in equal or greater environmental and economic values to the United States and address a compelling public need, as determined by the Chief. (b) WRPO. Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the participant and with consideration of site specific technical input from the FWS and the Conservation District. Any WRPO modification must meet WRP regulations and program objectives, comply with the definition of wetland restoration as defined in §1467.3, must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values to the United States.

§ 1467.14 Transfer of land.

(a) Offers voided. Any transfer of the property prior to the enrollment of the easement, 30-year contract, or restoration cost-share agreement contract, including the landowner entering into a contract or purchase agreement to sell the land subject to offer, shall void the offer of enrollment.

(b) Payments to landowners. For easements with multiple annual payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Claims to payments. With respect to any and all payments owed to participants, NRCS shall bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant’s successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1467.15 Violations and remedies.

(a) Easement violations. (1) In the event of a violation of the easement, 30-year contract, or any restoration cost-share agreement involving the participant, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation at the landowner’s expense.
(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant’s negligence or failure to comply with easement or contractual obligations.

(3) At any time there is a material breach of the easement covenants or any associated agreement, the easement shall remain in force and NRCS may withhold or require the refund of any easement and cost-share payments owed or paid to participants. Such withheld or refunded funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement. This remedy is in addition to any and all legal or equitable remedies available to the United States under applicable Federal or State law.

(4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney’s fees or expenses, associated with any enforcement or remedial action.

(b) 30-year Contract and Restoration Cost-Share Agreement violations. (1) If the NRCS determines that a participant is in violation of the terms of a 30-year contract, or restoration cost-share agreement, or documents incorporated by reference into the 30-year contract or restoration cost-share agreement, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the 30-year contract or restoration cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a restoration cost-share agreement or 30-year contract termination is effective immediately upon a determination by the State Conservationist that the participant has:

(i) Submitted false information;

(ii) Filed a false claim;

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part; or

(iv) Taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a restoration cost-share agreement or 30-year contract, the participant will forfeit all rights for future payments under the restoration cost-share agreement or 30-year contract, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

§ 1467.16 Payments not subject to claims.

Any cost-share, contract, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1467.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1467.18 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any administrative action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final Agency action except a decision of the Chief of the NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining
§ 1467.19 Property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by the NRCS in furtherance of its federally held property rights are under the jurisdiction of the federal courts and not subject to review under administrative appeal regulations.

§ 1467.19 Scheme and device.

(a) If it is determined by the NRCS that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1467.20 Market-based conservation initiatives.

(a) Acceptance and use of contributions. Section 1241(e) of the Food Security Act of 1985, as amended, (16 U.S.C. 3841(e)), allows the Chief to accept and use contributions of non-Federal funds to support the purposes of the program. These funds shall be available without further appropriation and until expended, to carry out the program.

(b) Ecosystem Services Credits for Conservation Improvements. USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through WRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that the requirements of the WRPO, contract, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a WRP easement, 30-year contract, or restoration cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

(2) Section 1222(f)(2) of the Food Security Act of 1985 as amended, does not allow wetlands restored with Federal funds to be utilized for Food Security Act wetland mitigation purposes.

PART 1468—CONSERVATION FARM OPTION

Subpart A—General Provisions

Sec.
1468.1 Purpose.
1468.2 Administration.
1468.3 Definitions.
1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.
1468.5 General provisions.
1468.6 Practice eligibility provisions.
1468.7 Participant eligibility provisions.
1468.8 Land eligibility provisions.
1468.9 Conservation farm plan.

Subpart B—Contracts

1468.20 Application for CFO program participation.
1468.21 Contract requirements.
1468.22 Conservation practice operation and maintenance.
1468.23 Annual payments.
1468.24 Contract modifications and transfers of land.
1468.25 Contract violations and termination.

Subpart C—General Administration

1468.30 Appeals.
1468.31 Compliance with regulatory measures.
1468.32 Access to operating unit.
1468.33 Performance based upon advice or action of representatives of CCC.
1468.34 Offsets and assignments.
1468.35 Misrepresentation and scheme or device.

Subpart A—General Provisions

§ 1468.1 Purpose.

(a) Through the Conservation Farm Option (CFO), the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns, water quality protection or improvement; wetland restoration and protection; wildlife habitat development and protection; and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. The Natural Resources Conservation Service (NRCS) may provide technical assistance, upon request by the producer or landowner.

(b) The CCC provides a single contract and annual payments for implementation of innovative and environmentally-sound methods for addressing natural resource concerns for producers of wheat, feed grains, cotton, and rice, resulting in consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program cost-share agreements (WRP), and the Environmental Quality Incentives Program (EQIP). CFO participation is determined through two step process: first, the Chief, with FSA concurrence, selects CFO pilot project areas based on proposals submitted by the public; then CCC accepts applications from eligible producers or owners within the selected pilot project area.

§ 1468.2 Administration.

(a) CFO is carried out using Commodity Credit Corporation funds and will be administered on behalf of CCC by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS will:

(1) Provide overall program management and implementation for CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates consistent with EQIP, CRP, and WRP payment rates;

(4) Make funding decisions and determine allocations of program funds, with FSA concurrence;

(5) Determine eligibility of practices;

(6) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

(c) FSA will:

(1) Be responsible for the administrative processes and procedures including applications, contracting, and financial matters, such as payments to participants, assistance in determining participant eligibility, and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA will cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer or owner in an approved pilot project area who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource
district, land conservation committee, or similar legally constituted body.

Conservation farm plan means a record of a participant’s decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS Field Office Technical Guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and take advantage of opportunities at a conservation management system level. In the conservation farm plan, the needs of the client, the resources, and Federal, state, Tribal, and local requirements will be met.

Conservation practice means a specified treatment, such as structural, vegetative, or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Sec. 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The guide contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. A copy of the guide for that area is available at the appropriate NRCS field office.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Innovative technology means the use of new management techniques, specific treatments, or procedures such as structural or vegetative measures used in field trials or as interim conservation practice standards that have the purpose of solving or reducing the severity of natural resource use problems or that take advantage of resource opportunities. Innovative technologies used by program participants must be able to achieve the required level of resource protection.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, wildlife management, resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of FSA, the National Institute of Food and Agriculture (NIFA), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to CFO implementation.

Operation and maintenance means work performed by the participant to
§ 1468.5 General provisions.

(a) Program participation is voluntary.

(b) Participation in the CFO is limited to producers of wheat, feed grains, cotton, or rice who have a production flexibility contract, in accordance with part 1412 of this chapter, on the farm enrolling in CFO and who are eligible for either CRP (7 CFR part 1410), EQIP (7 CFR part 1463), or WRP (7 CFR part 1467).

(c) The participant is responsible for the development of a conservation farm plan for the farm or ranch and may request assistance from NRCS or a third party in writing both the conservation farm plan and installing the significant soil, water, and related natural resource concerns. The pilot project area must have acreage enrolled in a production flexibility contract, which is authorized by the Agricultural Marketing and Transition Act of 1996. After these pilot project area proposals are received, the Chief, with FSA concurrence, will select proposals for funding.

(c) CCC will select pilot project areas based on the extent the individual proposal:

(1) Demonstrates innovative approaches to conservation program delivery and administration;

(2) Proposes innovative conservation technologies and system;

(3) Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;

(4) Ensures effective monitoring and evaluation of the pilot effort;

(5) Considers multiple stakeholder participation (partnerships) within the pilot area;

(6) Provides additional non-Federal funding; and

(7) Addresses the following:

(i) Conservation of soil, water, and related natural resources,

(ii) Water quality protection or improvement,

(iii) Wetland restoration and protection,

(iv) Wildlife habitat development and protection,

(v) Or other similar conservation purposes.

§ 1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.

(a) CCC may periodically solicit proposals from the public to establish pilot project areas in the FEDERAL REGISTER.

(b) Pilot projects may involve one or more participants. Each owner or producer within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO. This pilot project area may be a watershed, a subwatershed, an area, or an individual farm that can be geographically described and has specific environmental sensitivities or significance.
practices outlined within the plan. Conservation practices in the conservation farm plan that would have been eligible for payment under CRP, EQIP, or cost-share agreements under WRP are eligible for CFO payment. The provisions for determining eligibility for payment and the calculation of payment under CFO will be similar to those specified for the eligible conservation practices under CRP, EQIP, or cost-share agreements under WRP. For land retirement payments, the CRP payment schedule in effect for the applicable soils at the time the CFO contract is signed will be utilized. CCC will provide annual payments to a participant for such conservation practices as specified in the time schedule set forth in the conservation farm plan.

§ 1468.6 Practice eligibility provisions.

(a) Practices may be eligible for payment under CFO if the conservation practice specified in the conservation farm plan is determined to be an eligible practice, as determined by the Chief, in accordance with:
(1) 7 CFR part 1410 for land retirement rental payments and practices that are eligible under CRP;
(2) 7 CFR part 1467 for wetland restoration or protection practices that are eligible under WRP; or
(3) 7 CFR part 1466 for conservation practices that are eligible under EQIP.
(b) For practices that are installed on retired land, the CRP cost-share rate for practices must be utilized.

§ 1468.7 Participant eligibility provisions.

Participants in the CFO must at the time of enrollment:

(a) Have a production flexibility contract in accordance with part 1412 of this chapter on the farm enrolling in CFO.

(b) Agree to forgo earning future payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program cost-share payments authorized by part 1467 of this chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO for the term of the CFO contract.

(c) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;
(d) Have control of the land for the term of the proposed contract period;
(1) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.
(2) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.
(3) If the applicant is a landowner, the landowner is presumed to have control.
(e) Submit a proposed conservation farm plan to CCC that is in compliance with the terms and conditions of the program. To receive payment under the CFO, the participant must also meet the eligibility requirements, as determined by the Chief, in:
(1) 7 CFR part 1410 if the land retirement rental payment and practice determined eligible in accordance with § 1468.6(a);
(2) 7 CFR part 1467 if the wetland restoration or protection practice was determined eligible in accordance with § 1468.6(b), or
(3) 7 CFR part 1466, if the conservation practice was determined eligible in accordance with § 1468.6(c).
(4) Comply with the provisions at §1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.
(5) Supply information as required by CCC to determine eligibility for the program.
(6) Comply with all the provisions of the CFO contract which includes the conservation farm plan approved by the local conservation district.

§ 1468.8 Land eligibility provisions.

Land may be eligible for enrollment in CFO, if CCC determines that the farm or ranch is enrolled in a production flexibility contract, authorized by the Agricultural Marketing Transition
Act of 1996 and if the land upon which the CFO conservation practice will be applied is determined to be eligible land as determined by the Chief, in accordance with:

(a) 7 CFR part 1410, if the practice was determined an eligible land retirement rental payment and cost-share practice similar to CRP in accordance with §1468.6(a);
(b) 7 CFR part 1467, if the practice was determined an eligible wetland restoration or protection practice similar to WRP in accordance with §1468.6(b); or
(c) 7 CFR part 1466, if the practice was determined an eligible conservation practice similar to EQIP in accordance with §1468.6(c).

§ 1468.9 Conservation farm plan.

(a) The conservation farm plan forms the basis of the CFO contract. Prior to contract approval, a conservation farm plan must be written and approved. In deciding whether to approve a conservation farm plan, CCC may consider whether:

1. The participant will use conservation practices to solve the natural resource concerns that will maximize environmental benefits per dollar expended, and
2. The conservation practice would have been eligible for enrollment in the CRP, EQIP, or under the WRP cost-share agreements.

(b) The conservation farm plan for the farm or ranch unit of concern shall:

1. Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contact period;
2. Address the resource concerns identified in the CFO pilot project area proposal;
3. Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;
4. Ensure that net environmental benefits under a CRP contract are maintained or exceeded for the whole farm, as constituted by FSA, when terminating a CRP contract and enrolling in a CFO contract; and
5. Meet the objectives of the pilot project area.

(c) The conservation farm plan is part of the CFO contract.

(d) The conservation farm plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(e) Participants are responsible for implementing the conservation farm plan in compliance with this part.

(f) Upon a participant’s request, the NRCS may provide technical assistance to a participant.

1. Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(g) All conservation practices scheduled in the conservation farm plan are to be carried out in accordance with the applicable NRCS Field Office Technical Guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS Field Office Technical Guide.

(h)1. To simplify the conservation planning process for the participant, the conservation farm plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, state, Tribal, or local government program or regulatory requirements. CCC development or approval of a conservation farm plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by a non-USDA agency, except as agreed to by the participant and the relevant Federal, state, local or tribal entities.
(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation farm plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO program participation.

(a) Any eligible owner or producer within an approved pilot project area may submit an application for participation in the CFO to a service center or other USDA county or field office(s) of FSA or NRCS, where the pilot project area is located.

(b) CCC will accept applications throughout the fiscal year. CCC will rank and select the offers of applicants periodically, as determined appropriate by the State Conservationist. The application period will begin after a pilot project area has been approved.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a pilot project area which consists of more than one owner or producer. NRCS will prioritize applications from the same pilot project area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and designated FSA official, will approve for funding the application in a pilot project area based on eligibility factors of the applicant and the NRCS ranking.

(d) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. An applicant has the option of offering and accepting less than the maximum program payments allowed, offering to apply more conservation practices to the land in order to increase the likelihood of being enrolled. In evaluating the applications, the designated conservationist will take into consideration the following factors:

(1) Soil erosion;
(2) Water quality;
(3) Wildlife benefits;
(4) Soil productivity;
(5) Conservation compliance considerations;
(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;
(7) State water quality priority areas;
(8) The environmental benefits per dollar expended; and
(9) The degree to which application is consistent with the pilot project proposal.

(e) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements.

(a) In order for an applicant to receive annual payments, the applicant must enter into a contract agreeing to implement a conservation farm plan. The FSA county committee, with NRCS concurrence, will use the NRCS ranking consistent with the provisions of §1468.20 and grant final approval of the contract.

(b) A CFO contract will:

(1) Incorporate by reference all portions of a conservation farm plan applicable to CFO;
(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;
(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would tend to defeat the purposes of the contract, or reduce net environmental and societal benefits;
(ii) Refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract, in accordance with the provisions of §1468.25 of this part;
(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject...
Commodity Credit Corporation, USDA

§ 1468.23

Annual payments.

(a) CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant for that practice as specified in:

(1) Part 1410 of this chapter, if the practice is a land retirement rental payment or cost-share practice which would have qualified for payment under CRP in accordance with §1468.6(a);

(2) Part 1467 of this chapter, if the practice is a wetland restoration or protection practice which would have qualified for payment under WRP which was determined eligible in accordance with §1468.6(b);

(3) Part 1466 of this chapter, if the practice was a conservation practice which would have qualified for payment under EQIP which was determined eligible in accordance with §1468.6(c);
(b) The maximum amount of annual payments which a person may receive under the CFO for any fiscal year shall not exceed the total of the amounts calculated in accordance with paragraph (a) of this section after being limited as follows:

(1) The payment calculated in accordance with paragraph (a)(1) of this section is limited in accordance with CRP payment limitation provisions set forth in part 1410 of this chapter.

(2) The payment calculated in accordance with §1467.9(a)(2) of this chapter is not limited.

(3) The payment calculated in accordance with §1466.23(a)(3) of this chapter is limited in accordance with EQIP payment limitation provisions in §1466.23(b) of this chapter.

(c) The regulations set forth at part 1400 of this chapter will be applicable in making payment eligibility determinations for CFO and in making person determination as they apply to the limitation of payments determined in accordance with paragraph (b) of this section.

(d) The CCC cost-share payments to a participant shall be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

(e) A landowner or producer that enrolls in CFO and terminates a CRP or EQIP contract or WRP cost-share agreement will be eligible to receive payments for practices which have been determined, established, or completed by the technical agency under those contracts or agreements. Once the CFO contract is effective, all payments for practices, including any practice transferred from the terminated contract agreement will be made under the CFO contract, except for payments already earned under prior contracts or cost-share agreements.

(f) Payments will not be made to a participant who has applied or initiated the application of a conservation practice for the purposes of CFO prior to approval of the CFO contract.

(g) When requested by the State Conservationist on a case-by-case basis, the Chief may approve, based upon availability of funding, cost share on the reapplication of a practice to replace or repair practice destroyed by unusual circumstances beyond the control of the landowner.

(h) The participant and NRCS must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract before the CCC will approve the payment of any cost-share, incentive, or land retirement payment.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements and is approved by the conservation district.

(b) The participant may agree to transfer a contract to another eligible owner or operator with the agreement of CCC. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract. By agreeing to participate in CFO, CCC may require operation and maintenance of those conservation practices installed under CRP, EQIP, or WRP.

(c) CCC may require a participant to refund all or a portion of any assistance earned under a CRP or EQIP contract, or WRP cost-share agreement that was terminated as a condition of participation in CFO, if the participant sells or loses control of the land under a CFO contract and the new owner or controller does not assume responsibility under the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If it is determined that a participant is in violation of the provisions of this part, or the terms of the contract including portions of the contract that incorporate transferred obligations from CRP or EQIP contracts, or WRP cost-share agreements, CCC will give the participant written notice of a reasonable time to correct the violation and comply with the terms of the contract and attachments thereto,
Commodity Credit Corporation, USDA

§ 1468.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.
§ 1468.33  Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34  Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.35  Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such applicant or participant with respect to CFO contracts.

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.
1469.1  Applicability.
1469.2  Administration.
1469.3  Definitions.
1469.4  Significant resource concerns.
1469.5  Eligibility requirements.
1469.6  Enrollment criteria and selection process.
1469.7  Benchmark condition inventory and conservation stewardship plan.
1469.8  Conservation practices and activities.
1469.9  Technical assistance.

Subpart B—Contracts and Payments

1469.20  Application for contracts.
1469.21  Contract requirements.
1469.22  Conservation practice operation and maintenance.
1469.23  Program payments.
1469.24  Contract modifications and transfers of land.
1469.25  Contract violations and termination.

Subpart C—General Administration

1469.30  Fair treatment of tenants and sharecroppers.
1469.31  Appeals.
1469.32  Compliance with regulatory measures.
1469.33  Access to agricultural operation.
1469.34  Performance based on advice or action of representatives of NRCS.
1469.35  Offsets and assignments.
1469.36  Misrepresentation and scheme or device.

AUTHORITY: 16 U.S.C. 3830 et seq.

SOURCE: 70 FR 15212, Mar. 25, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1469.1  Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico,
Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) The Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of an Indian Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Indian Tribe or Tribal Nation and the NRCS Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land. This includes land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the applicant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

1. Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in 7 U.S.C. 1991(a). This requirement applies to all members of an entity; and

2. Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in
the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to §1469.7(a) that NRCS uses to measure an applicant’s existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client’s objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client’s objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or Tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

Conservation system means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.
Enhancement payment means CSP payments available to all tiers as described in §1469.23(d).

Enrollment categories means a classification system used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in §1469.23(b).

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop-lines in cases where farming practices make it probable that such crop-line is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at http://www.nrcs.usda.gov/technical/fotg.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber or other agricultural products.

Hayland means a subcategory of “cropland” managed for the production of forage crops that are machine harvested. The crop may be grasses, legumes, or a combination of both.

Incidental forest land means forested land that includes all nonlinear forested riparian areas (i.e., bottomland forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standards will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

Indian Tribe means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material

Indian trust lands means real property in which:
that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices and measures that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, energy management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

(1) With direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the conservation stewardship contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the National Institute of Food and Agriculture, the conservation district, and other Federal, State, and local government agencies, including Indian Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in §1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in §1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and any signatory to a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops.
Pastured cropland will receive the same stewardship payment as cropland. *Pastureland* means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

*Practice life span* means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

*Priority resource concern* means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

*Producer* means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

*Quality criteria* means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

*Rangeland* means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizers being applied. Grasslands, savannas, prairie, many wetlands, some deserts, tundra, coastal marshes and wet meadows are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

*Resource concern* means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

*Resource-conserving crop rotation* means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

*Resource management system* means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of NRCS.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

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

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

*Significant resource concerns* means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

*Soil quality* means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical
§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to §1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) Applicants may submit only one application for each sign-up. Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.

(c) Eligible applicants. To be eligible to participate, an applicant must—
(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;
(2) Have control of the land for the life of the proposed contract period.
   (i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and
   (ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner;
(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations);
(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with §1469.7(a); and
(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to information related to eligibility criteria in the sign-up notice, and information to verify the applicant’s status as a beginning or a limited resource farmer or rancher.
(d) Eligible land:
   (1) To be eligible for enrollment in CSP, land must be:
      (i) Private agricultural land;
      (ii) Private non-industrial forested land that is an incidental part of the agricultural operation;
      (iii) Agricultural land that is Tribal, allotted, or Indian trust land;
      (iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, turn rows, intermingled small wet areas or riparian areas); or
      (v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and
   (vi) A majority of the agricultural operation must be within a watershed selected for sign-up.
(2) The following land is not eligible for enrollment in CSP:
   (i) Land enrolled in the Conservation Reserve Program;
   (ii) Land enrolled in the Wetlands Reserve Program;
   (iii) Land enrolled in the Grassland Reserve Program;
   (iv) Public land including land owned by a Federal, State or local unit of government;
   (v) Land referred to in paragraphs (d)(2)(i), (ii) (iii) and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets the minimum level of treatment on the eligible land and may be described in the conservation stewardship plan.
(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.
(4) Delineation of the agricultural operation.
   (i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (d)(1)(iv) of this section, and other lands, identified in paragraph (d)(1)(v) of this section under the control of the applicant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.
   (ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.
§ 1469.5 7 CFR Ch. XIV (1–1–14 Edition)

(e) Conservation standards—(1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the eligible land uses within the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all eligible land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section for all eligible land uses on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in §1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive.

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark condition inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water.

(iii) The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides for:

(i) A forage-animal balance;

(ii) Proper livestock distribution;

(iii) Timing of use; and

(iv) Managing livestock access to water courses.

(4) The minimum level of treatment for Tier III:

(i) The minimum level of treatment for Tier III is having a fully implemented resource management system that meets the quality criteria for the local NRCS FOTG for all applicable resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 using a general or species specific habitat assessment guide; and

(ii) All riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to

846
§ 1469.6 Enrollment criteria and selection process.

(a) Selection and funding of priority watersheds. (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues e.g., location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) Enrollment categories. The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories may be defined by criteria related to resource concerns and levels of historic conservation treatment, including the producer’s willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

(i) Willingness of the applicant to participate in local conservation enhancement activities;

(ii) Targeting program participation for Limited Resource Producers;

(iii) Targeting program participation to water quality priority areas for nutrient or pest management;

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) Sign-up process. (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in § 1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their
CSP applications and contracts that are not listed in §1469.21;
(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;
(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;
(vi) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and
(vii) The schedule for the sign-up process, including the deadline(s) for applying.
(2) NRCS will accept applications according to the timeframes specified in the sign-up notice.
(d) Selection of contracts. (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category and subcategory based on the criteria specified in the sign-up notice and into a Tier based on the criteria in 1469.5(e). Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations.
(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the enrollment categories and subcategories funded in the given sign-up, NRCS will make payments as described in the contract in return for the implementation and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.
§ 1469.7 Benchmark condition inventory and conservation stewardship plan.
(a) The benchmark condition inventory and associated case file information must include:
(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage;
(2) A description of the applicant’s production system(s) on the agricultural operation to be enrolled;
(3) The existing conservation practices and resource concerns, problems, and opportunities on the operation;
(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans;
(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures; and,
(6) A list of enhancements that the applicant may be willing to undertake as part of their contract.
(b) Conservation stewardship plan. (1) The conservation stewardship plan and associated case file information must include:
(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract will achieve;
(ii) A plan map showing the acreage to be enrolled in CSP;
(iii) A verified benchmark condition inventory as described in §1469.7(a);
(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;
(v) A description and implementation schedule of—
(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up,
(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns,
(C) Eligible enhancement activities as selected by the applicant and approved by NRCS, and
(D) A schedule for transitioning to higher tier(s) of participation, if applicable;
(vi) A description of the conservation activities that is required for a contract to include a transition to a higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS and described to the applicant.

(2) The conservation stewardship plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(3) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

§ 1469.8 Conservation practices and activities.

(a) Conservation practice and activity selection. (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief’s designee provides the list, it will be approved by the Director of the Financial Assistance Programs Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice or activity will address;

(iv) Locally available technology;

(v) New and emerging conservation technology;

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

(2) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except as provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application to the program.

(d) New practice payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract, unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level; however, the State Conservationist may supplement specific criteria to meet localized conditions within the State or areas.

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: Assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation stewardship plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and quality assurance activities.
(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the conservation stewardship contracts and contract payments.

(e) Conservation stewardship plans will be developed by NRCS certified conservation planners.

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts.

(a) Applications must include:

(1) A completed self-assessment workbook;

(2) Benchmark condition inventory and conservation stewardship plan in accordance with §1469.7 for the eligible land uses on the entire operation or, if Tier I, for the portion being enrolled;

(3) Any other requirements specified in the sign-up notice;

(4) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP; and,

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice.

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Participants can only have one active contract at any one time.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other provisions, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion of land being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

(b) Program participants will only receive payments from one conservation stewardship contract.

(c) CSP participants must address the following requirements or additional resource concerns to the minimum level of treatment by the end of their conservation stewardship contract:

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirements:

(i) Address an additional locally significant resource concern, as described in section III of the NRCS FOTG over the entire agricultural operation. Applicants may satisfy this requirement by demonstrating that the locally significant resource concern is not applicable to their operation or that they have already addressed it in accordance with NRCS’ quality criteria; and

(ii) Additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) Transition to a higher tier of participation. (1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.
(2) A contract which transitions to higher tier(s) of participation must include:
   (i) A schedule for the activities associated with the transition(s);
   (ii) A date certain by which time the transition(s) must occur; and,
   (iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract which transitions to a higher tier will be modified to receive the higher payments once the required level of treatment has been achieved and field verified by NRCS.

(4) A contract which includes a transition from Tier I to Tier II or III may be adjusted in length up to 10 years beginning from the original contract date.

(e) A conservation stewardship contract must:
   (1) Incorporate by reference the conservation stewardship plan;
   (2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;
   (3) Incorporate all provisions as required by law or statute, including participant requirements to—
       (i) Implement and maintain the practices as identified and scheduled in the conservation stewardship plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements,
       (ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract,
       (iii) Comply with the terms of the contract, or documents incorporated by reference into the contract. NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct any violation and comply with the terms of the contract and attachments thereto. If a violation continues, the State Conservationist may terminate the conservation stewardship contract, and
       (iv) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP;
   (4) Specify the requirements for operation and maintenance of the applied conservation practices;
   (5) Specify the schedule of payments under the life of the contract, including how those payments—
       (i) Relate to the schedule for implementing additional conservation measures as described in the conservation stewardship plan,
       (ii) Relate to the actual implementation of additional conservation measures as described in the conservation stewardship plan, and
       (iii) May be adjusted by NRCS if the participant’s management decisions change the appropriate set or schedule of conservation measures on the operation; and,
   (6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(f) Practices scheduled in contracts must be applied and maintained within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract.

(h) Participants must:
   (1) Implement the conservation stewardship contract approved by NRCS;
   (2) Make available to NRCS, appropriate records showing the timely implementation of the contract;
   (3) Comply with the regulations of this part; and
   (4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(i) NRCS will determine the payments under the contract as described in §1469.23.

(j) For contracts encompassing the entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant’s direct control, as determined by NRCS.

§1469.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which a payment was received to ensure that the new practice or enhancement achieves its intended
§ 1469.23 Program payments.

(a) Stewardship component of CSP payments.

(1) The conservation stewardship plan, as applicable, divides the land area to be enrolled in the CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, pastured cropland and range land, among other categories.

(2) NRCS will determine an appropriate stewardship payment rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraph (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

(3) NRCS will compute the stewardship component of the CSP payment as the product of: the number of acres in each land use category (not including ‘other’ or land not in the applicant’s control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments.

(4) Other incidental parcels as defined in §1469.5(d)(1)(iv) may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Payment is limited to not more than ten percent of the contract acres. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in §1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) Existing practice component of CSP payments.

(1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with §1469.8(a).

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will
not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

(c) New practice payments. (1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with §1469.8(a).

(2) If the conservation stewardship contract requires the implementation of a new structural or land management practice, NRCS may pay a percentage of the cost of installing the new practice. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant’s share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(4) Cost-share payments may be provided by other programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(5) If additional practices are installed or implemented to advance a contract from one tier of participation to a higher tier, the practice must be certified as meeting FOTG practice standards by NRCS.

(6) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(7) NRCS will not pay a new practice payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(8) The Chief may reduce the rates in any given sign-up notice.

(d) Enhancement component of CSP payments. (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation stewardship plan demonstrates to the satisfaction of NRCS that the plan’s activities will increase conservation performance including activities related to energy management as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the contract’s Tier of participation as outlined in the sign-up notice and as described in §1469.5(e) and the contract requirements in §1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up notice; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve
at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation stewardship plan as outlined in the sign-up notice.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(5) Eligible enhancement payments. (i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each practice and activity.

(ii) An enhancement payment will be made to encourage a producer to perform or continue a management practice or activity, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project that produces enhanced environmental performance and benefits or produces information and data to improve a resource concern or update the NRCS technical guides. Enhancement payments will be:

(A) For activities where NRCS can demonstrate the economic value of the environmental benefits, based on a given activity’s expected environmental benefit value. The payment may not exceed the activity’s expected economic value; or

(B) For activities where NRCS cannot demonstrate the economic value of the environmental benefits, a rate that will not exceed a producer’s cost to implement a given activity.

(iii) NRCS will post the list of approved enhancement activities and payment amounts for each activity concurrent with the CSP sign-up notice.

(6) The Chief may set a not-to-exceed limit or variable payment rate for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

1. $20,000 per year for a Tier I conservation stewardship contract.
2. $35,000 per year for a Tier II conservation stewardship contract, or
3. $45,000 per year for a Tier III conservation stewardship contract.

(4) Stewardship components of CSP payments cannot exceed $5,000 per year for Tier I, $10,500 per year for Tier II, or $13,500 per year for Tier III.

(5) The new practice payment will not exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year with the exception of beginning and limited resource producers, in which case the new practice payment may be up to 65 percent.

(f) The new practice and enhancement components of the conservation stewardship contract payment may increase once the participant applies and agrees to maintain additional conservation practices and activities as described in the conservation stewardship plan.

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

(i) NRCS may not make any payments to participants for:

1. Practices within their conservation stewardship plan that are required to meet conservation compliance requirements found in 7 CFR Part 12;
2. Practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the conservation stewardship contract approval;
3. Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;
4. The purchase or maintenance of equipment;
5. A non-land based structure that is not integral to a land based practice, as determined by the Chief; or
Commodity Credit Corporation, USDA  § 1469.25

(6) New practices that were applied with cost-share assistance through other USDA cost-share programs.

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified:
(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;
(2) As required by the State Conservationist due to changes to the type, size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program.

(b) Participants may request a modification to their contract to change their tier of participation under a conservation stewardship contract once the measures determined necessary by NRCS to meet the next tier level have been established.

(c) Contract transfers are permitted when there is agreement among all parties to the contract and the contract area remains intact.

(1) NRCS must be notified within 60 days of the transfer of interest and the transferee’s acceptance of the contract terms and conditions, or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

§ 1469.25 Contract violations and termination.

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto.

If the violation continues, the State Conservationist may terminate the conservation stewardship contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective imme-


diately upon a determination by the State Conservationist that the participant has: submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights for future payments under the contract, and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with part 1403 of this chapter. The State Conservationist may require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(e) When making any contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant’s control that have prevented compliance with the contract including natural disasters or events.

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the contract terms and conditions have been fully complied with before termination of the contract.

855
§ 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that potential participants who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among multiple applicants seeking enrollment as to an applicant’s eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from their performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing
§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a participant erroneously represented any fact affecting a CSP determination made in accordance with this part, the participant’s conservation stewardship contract will be terminated immediately in accordance with §1469.25(b). The participant will forfeit all rights for future contract payments, and must refund payments received, plus interest, and liquidated damages as described in §1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest, and liquidated damages as determined in accordance with §1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant’s interest in all conservation stewardship contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

Subpart A—General Provisions

§ 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year (FY) 2009 and thereafter.

(b) The purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by:

(1) Undertaking additional conservation activities; and

(2) Improving, maintaining, and managing existing conservation activities.

(c) CSP is applicable in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(d) NRCS provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related natural resources, and for any similar conservation purpose as determined by NRCS.
§ 1470.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

(b) The Chief is authorized to modify or waive a provision of this part if the Chief determines the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) To achieve the conservation goals of CSP, NRCS will:

(1) Make the program available nationwide to eligible applicants on a continuous application basis with one or more ranking periods to determine enrollments. One of the ranking periods will occur in the first quarter of each fiscal year, to the extent practicable; and

(2) Develop conservation measurement tools (CMT) for the purpose of carrying out the program.

(d) During the period beginning on October 1, 2008, and ending on September 30, 2017, NRCS will, to the maximum extent practicable:

(1) Enroll in CSP an additional 12,769,000 acres for each fiscal year; and

(2) Manage CSP to achieve a national average rate of $18 per acre, which includes the costs of all financial and technical assistance and any other expenses associated with program enrollment and participation.

(e) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program matters, including:

(i) Establishment of ranking pools appropriate for the conduct of CSP within the State to ensure program availability and prioritization of conservation activities. Ranking pools may be based on watersheds, geographic areas, or other appropriate regions within a State and may consider high-priority regional and State-level resource concern areas;

(ii) Identification of not less than three, nor more than five priority resource concerns in particular watersheds, geographic areas, or other appropriate regions within a State;

(iii) Identification of resource-conserving crops that will be part of resource-conserving crop rotations;

(iv) Development of design protocols and participation procedures for participation in on-farm research, and demonstration and pilot projects; and

(v) Evaluation of Cooperative Conservation Partnership Initiative (CCPI) projects and allowable program adjustments for the conduct of projects.

(2) Assign NRCS employees as designated conservationists to be responsible for CSP at the local level; and

(3) Be responsible for the program in their assigned State.

(f) NRCS may enter into agreements with Federal, State, and local agencies, conservation districts, Indian tribes, private entities, and individuals to assist NRCS with program implementation.

§ 1470.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, rangeland, and pastureland on which agricultural products or livestock are produced and resource concerns may be addressed. Agricultural lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the applicant; and

(2) Which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

Animal waste storage or treatment facility means a structural conservation practice used for storing or treating animal waste.
Commodity Credit Corporation, USDA § 1470.3

Applicant means a person, legal entity, joint operation, or Indian tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.

Beginning farmer or rancher means:
(1) An individual or legal entity who:
   (i) Has not operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years (this requirement applies to all members of a legal entity); and
   (ii) Will materially and substantially participate in the operation of the farm or ranch.

   (2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

   (3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, or designee.

Conservation activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities as determined by NRCS.

Conservation district means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” “natural resource district,” or similar name.

Conservation measurement tool means procedures developed by NRCS to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance.

Conservation planning means using the planning process outlined in the applicable National Planning Procedures Handbook (NPPH).

Conservation practice means a specified treatment, such as a structural or vegetative practice or management technique, commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the NRCS Field Office Technical Guide, section IV, which is based on the National Handbook of Conservation Practices.

Conservation stewardship plan means a record of the participant’s decisions that describes the schedule of conservation activities to be implemented, managed, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant’s conservation objectives will be maintained with the plan.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is an agreement for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for CSP at the local level.
Effective control means possession of the land by ownership, written lease, or other legal agreement and authority to act as decisionmaker for the day-to-day management of the operation both at the time the applicant enters into a stewardship contract and for the required period of the contract.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those enhancements directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.

Enrollment means for the initial sign-up for FY 2009, NRCS will consider a participant ‘enrolled’ in CSP based on the fiscal year the application is submitted, once NRCS approves the participant’s contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Indian lands means all lands held in trust by the United States for individual Indians or Indian tribes, or all land titles held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or lands subject to the rights of use, occupancy, or benefit of certain Indian tribes. This term also includes lands for which the title is held in fee status by Indian tribes and the U.S. Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

Indian Tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law.

Limited Resource Farmer or Rancher means:

1. A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years ($142,000 is the amount for 2010, adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

2. Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce Data).

Liquidated damages means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local working group means the advisory body as described in 7 CFR part 610.

Management measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program, administered by the Department of Agriculture (USDA) Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation...
that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of USDA which has responsibility for administering CSP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land that has existing tree cover or is suitable for growing trees, and is owned by an individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Operation and maintenance means work performed by the participant to maintain existing conservation activities to at least the level of conservation performance identified at the time the application is obligated into a contract, and maintain additional conservation activities installed and adopted over the contract period.

Participant means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

Payment means financial assistance provided to the participant under the terms of the CSP contract.

Person means, as defined in part 1400 of this chapter, an individual, natural person and does not include a legal entity.

Priority resource concern means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local working groups, as a priority for a State, or the specific geographic areas within a State.

Producer means a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation, as defined in part 1400 of this chapter, or who is engaged in agricultural production or forest management.

Resource concern means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.

Resource-conserving crop means a crop that is one of the following:

1. A perennial grass;
2. A legume grown for use as forage, seed for planting, or green manure;
3. A legume-grass mixture;
4. A small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource-conserving crop rotation means a crop rotation that:

1. Includes at least one resource-conserving crop as determined by the State Conservationist;
2. Reduces erosion;
3. Improves soil fertility and tilth;
4. Interrupts pest cycles; and
5. In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a producer who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. A socially disadvantaged group is a group whose members have been subject to racial or ethnic 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, and Hispanics. A socially disadvantaged applicant is an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement CSP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship threshold means the level of natural resource conservation and environmental management required, as determined by NRCS using the CMT, to conserve and improve the quality and condition of a natural resource.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural...
resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, forest producers, and other eligible entities, such as conservation planning, technical consultation, preparation of forest stewardship management plans, and assistance with the design and implementation of conservation activities; and

(2) Technical infrastructure, including processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

**Technical Service Provider** means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of, or on behalf of, NRCS as referenced in 7 CFR part 652.

§ 1470.4 Allocation and management.

(a) The Chief will allocate acres and associated funds to State Conservationists:

(1) Primarily on each State’s proportion of eligible land to the total amount of eligible land in all States; and

(2) On consideration of:

(i) The extent and magnitude of the conservation needs associated with agricultural production in each State based on natural resource factors that consider national, regional, and State-level priority ecosystem areas,

(ii) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs, and

(iii) Other considerations determined by the Chief to achieve equitable geographic distribution of program participation.

(b) The State Conservationist will allocate acres to ranking pools, to the extent practicable, based on the same factors the Chief considers in making allocations to States.

(c) Of the acres made available for each of fiscal years 2009 through 2012 to carry out CSP, NRCS will use, as a minimum:

(1) Five percent to assist beginning farmers or ranchers, and

(2) Five percent to assist socially disadvantaged farmers or ranchers.

(d) In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the reallocation process, NRCS will consider several factors, including demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

(e) Of the CSP funds and acres made available for each fiscal year:

(1) The Chief will reserve 6 percent of funds and acres to ensure an adequate source of funds and acres for the CCPI. Of the funds and acres reserved, the Chief will allocate:

(i) Ninety percent to projects based on the direction of State Conservationists, with the advice of State Technical Committees; and

(ii) Ten percent to projects based on a national competitive process established by the Chief. In determining funding allocation decisions for these projects, NRCS will consider the extent to which they address national and regional conservation priorities.

(2) Any funds and acres reserved for the CCPI in a fiscal year that are not obligated by April 1 of that fiscal year may be used to carry out other CSP activities during the remainder of that fiscal year.

§ 1470.5 Outreach activities.

(a) NRCS will establish program outreach activities at the national, State, and local levels to ensure that potential applicants who control eligible land are aware and informed that they may be eligible to apply for program assistance.

(b) Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, beginning farmers or ranchers, limited resource farmers or ranchers, and socially disadvantaged farmers or ranchers.

(c) NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.
Commodity Credit Corporation, USDA

§ 1470.6 Eligibility requirements.

(a) Eligible applicant. To be an eligible applicant for CSP, a producer must be the operator in the Farm Service Agency (FSA) farm records management system. Potential applicants that are not in the FSA farm records management system must establish records with FSA. Potential applicants whose records are not current in the FSA farm records management system must update those records prior to the close of the evaluation period to be considered eligible. NRCS may grant exceptions to the “operator of record” requirement for producers, tenants, and owners in the FSA farm records management system that can demonstrate, to the satisfaction of NRCS, they will operate and have effective control of the land. Applicants must also meet all of the following requirements:

1. Have effective control of the land unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;
2. Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;
3. Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;
4. Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors, conservation activity and production system records, information to verify the applicant’s status as a historically underserved producer, if applicable, and payment eligibility as established by 7 CFR part 1400;
5. Provide a list of all members of the legal entity and embedded entities along with members’ tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(b) Eligible land. A contract application must include all of the eligible land on an applicant’s agricultural operation, except as identified in paragraph (b)(3) of this section. A participant may submit an application(s) to enter into an additional contract(s) for newly acquired eligible land, which would then compete with other applications in a subsequent ranking period. The land as described below is part of the agricultural operation and eligible for enrollment in the CSP:

1. Private agricultural land;
2. Agricultural Indian lands;
3. NIPF:
   i. By special rule in the statute, NIPF is eligible land,
   ii. No more than 10 percent of the acres enrolled nationally in any fiscal year may be NIPF,
   iii. The applicant will designate by submitting a separate application if they want to offer NIPF for funding consideration,
   iv. If designated for funding consideration, then the NIPF component of the operation will include all the applicant’s NIPF. If not designated for funding consideration, then the applicant’s NIPF will not be part of the agricultural operation;
4. Other private agricultural land, as determined by the Chief, on which resource concerns related to agricultural production could be addressed by enrolling the land in CSP.

(c) Ineligible land. The following ineligible lands are part of the agricultural operation, but ineligible for inclusion in the contract or for payment in CSP:
1. Land enrolled in the Conservation Reserve Program (CRP), 7 CFR part 1410;
2. Land enrolled in the Wetlands Reserve Program (WRP), 7 CFR part 1467;
3. Land enrolled in the Grassland Reserve Program (GRP), 7 CFR part 1415;
§ 1470.7 Enhancements and conservation practices.

(a) Participant decisions describing the additional enhancements and conservation practices to be implemented under the conservation stewardship contract will be recorded in the conservation stewardship plan.

(b) NRCS will make available to the public the list of enhancements and conservation practices available to be installed, adopted, maintained, and managed through the CSP.

(c) NRCS will make available bundled suites of conservation activities for participants to voluntarily select to include as part of their conservation stewardship plans. The bundles will be designed to coordinate the installation and adoption of enhancements with each other to address resource concerns in a more comprehensive and cost-effective manner.

(d) CSP encourages the use of other NRCS programs to install conservation practices that are required to meet agreed-upon stewardship thresholds, but the practices may not be compensated through CSP.

§ 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a technical service provider (TSP) as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is available and program specifications are appropriate so as not to limit producer participation because of size or type or operation or production system, including specialty crop and organic production. In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

(e) NRCS may utilize the services of State foresters and existing technical assistance programs such as the Forest Stewardship Program of the U.S. Forest Service, in coordinating assistance to NIPF owners.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) Submission of contract applications. Applicants may submit an application to enroll all of their eligible land into CSP on a continuous basis.

(b) Stewardship threshold requirement. To be eligible to participate in CSP, an applicant must submit to the designated conservationist for approval, a contract application that:

1. Indicates the applicant’s conservation activities, at the time of application, are meeting the stewardship threshold for at least one resource concern;

2. Would, at a minimum, meet or exceed the stewardship threshold for at least one priority resource concern in...
addition to the resource concern described in paragraph (b)(1) of this section by the end of the conservation stewardship contract by:

(i) Installing and adopting additional conservation activities, and
(ii) Improving, maintaining, and managing conservation activities present on the agricultural operation at the time the contract application is accepted by NRCS;

(3) Provides a map, aerial photograph, or overlay that:

(i) Identifies the applicant’s agricultural operation and NIPF component of the operation, and
(ii) Delineates eligible land with associated acreage amounts; and

(4) If the applicant is applying for on-farm research and demonstration activities or for pilot testing, describes the nature of the research, demonstration, or pilot testing in a manner consistent with design protocols and application procedures established by NRCS.

(c) Evaluation of contract applications. NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the first quarter of the fiscal year;

(2) In evaluating CSP applications, the State Conservationist or designated conservationist will rank applications based on the following factors, using the CMT, to the maximum extent practicable:

(i) Level of conservation treatment on all applicable priority resource concerns at the time of application,

(ii) Degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance,

(iii) Number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract,

(iv) Extent to which other resource concerns, in addition to priority resource concerns, will be addressed to meet or exceed the stewardship threshold by the end of the contract period;

(3) Within each State or established ranking pool, the State Conservationist will address conservation access for certain farmers or ranchers, including:

(i) Socially disadvantaged farmers or ranchers; and

(ii) Beginning farmers or ranchers.

(g) Application pre-approval. The State Conservationist or designated conservationist will make application pre-approval determinations during established ranking periods based on eligibility and ranking score.
§ 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be developed in accordance with §1470.22, the State Conservationist or designee will enter into a conservation stewardship contract with the participant to enroll all of the eligible land on a participant’s agricultural operation.

(b) The conservation stewardship contract will:

1. Provide for payments over a period of 5 years;
2. Incorporate by reference the conservation stewardship plan;
3. State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;
4. Incorporate all provisions as required by law or statute, including requirements that the participant will:
   i. Implement the conservation stewardship plan approved by NRCS during the term of the contract,
   ii. Operate and maintain conservation activities on the agricultural operation consistent with §1470.23,
   iii. Comply with the terms of the contract or documents incorporated by reference into the contract,
   iv. Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with §1470.27,
   v. Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with §1470.25,
   vi. Maintain and make available to NRCS upon request, appropriate records documenting applied conservation activity and production system information, and provide evidence of the effective and timely implementation of the conservation stewardship plan and contract, and
   vii. Not engage in any action during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;
5. Permit all economic uses of the land that:
   i. Maintain the agricultural or forestry nature of the land, and
   ii. Are consistent with the conservation purposes of the contract;
6. Include a provision to ensure that a participant will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including a disaster or related condition, as determined by the State Conservationist; and
7. Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

§ 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the NPPH to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant’s decisions that describes the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Associated supporting information maintained with the participant’s plan will include:
1. CMT documentation that will be the basis for:
   i. Identifying and inventorying resource concerns,
   ii. Establishing benchmark data on the condition of existing conservation activities, and
   iii. Documenting the participant’s conservation objectives to reach and exceed stewardship thresholds;
2. A plan map delineating enrolled land with associated acreage amounts;
3. In the case where a participant wishes to initiate or retain organic certification, documentation that will support the participant’s transition to
Commodity Credit Corporation, USDA

§ 1470.24 Payments.

(a) Annual payments. Subject to the availability of funds, NRCS will provide, as appropriate, annual payments under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities. A split-rate annual payment structure will be used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation.

(1) To receive annual payments, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one additional enhancement must be scheduled, installed, and adopted in the first fiscal year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third fiscal year of the contract, and

(ii) As a minimum, maintain existing activities to the level of existing conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period;

(2) To earn annual payments for an eligible land use, a participant must schedule, install, and adopt at least one additional conservation activity on that land-use type. Eligible land-use types that fail to have at least one additional conservation activity scheduled, installed, and adopted will not receive annual payments;

(3) A participant’s annual payments will be determined using the conservation performance estimated by the CMT and computed by land-use type for eligible land earning payments. Conservation performance is prorated over the contract term so as to accommodate, to the extent practicable, participants earning equal annual payments in each fiscal year;

(4) The annual payment rates will be based to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training,

(ii) Income foregone by the participant, and

(iii) Expected environmental benefits, determined by estimating conservation performance improvement using the CMT;

(5) The annual payment method will accommodate some participant operational adjustments without the need for contract modification.

(i) Enhancements may be replaced with similar enhancements without adjustment of annual payment as long as the conservation performance is determined by NRCS to be equal to or better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will not be allowed, and

(ii) Adjustments to existing activities may occur consistent with conservation performance requirements from §1470.23; and

(6) Enhancements may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) Supplemental payments. Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt a resource-conserving crop rotation.
§ 1470.24  7 CFR Ch. XIV (1–1–14 Edition)

(1) The State Conservationist will determine whether a resource-conserving crop rotation is eligible for supplemental payments based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits;

(2) A participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third fiscal year of the contract and planted on all rotation acres by the fifth fiscal year of the contract; and

(3) The supplemental payment is set at a rate needed to encourage a producer to adopt a resource-conserving crop rotation and will be based, to the maximum extent practicable, on costs incurred and income foregone by the participant and expected environmental benefits, determined by estimating conservation performance improvement using the CMT.

(c) On-farm research and demonstration or pilot testing. A participant may be compensated through their annual payment for:

(1) On-farm research and demonstration activities; or

(2) Pilot testing of new technologies or innovative conservation activities.

(d) Minimum contract payment. NRCS will make a minimum contract payment to participants who are socially disadvantaged farmers or ranchers, beginning farmers or ranchers, or limited resource farmers or ranchers, at a rate determined by the Chief in any fiscal year that a contract’s payment amount total is less than $1,000. Definitions of socially disadvantaged farmers or ranchers, beginning farmers or ranchers, or limited resource farmers or ranchers are contained in §1470.3.

(e) Timing of payments. NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. For newly enrolled contracts, payments will be made as soon as practicable after October 1 following the fiscal year of enrollment.

(f) Non-compensatory matters. A CSP payment to a participant will not be provided for:

(1) New conservation practices or enhancements applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities, or associated waste transport or transfer devices for animal feeding operations; or

(3) Conservation activities for which there is no cost incurred or income foregone by the participant.

(g) Payment limits. A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed $40,000 during any fiscal year for all CSP contracts entered into, and $200,000 for all CSP contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(h) Contract limits. Payments under a conservation stewardship contract with joint operations will be limited to $80,000 per fiscal year and $400,000 over the term of the initial contract period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations. The payment limits for contracts with persons or legal entities are contained in §1470.24(g).

(i) Payment limitation provisions for individual Indians and Indian tribes. Payment limitations apply to individual tribal member(s) when applying and subsequently being granted a contract as an individual(s). Contracts with Indian tribes or Alaska Native corporations are not subject to payment or contract limitations. Indian tribes and BIA will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of contract obligation will cover the entire contract period. The tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for
calculation of overall payment limitations.

(j) **Tax Identification Number.** To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage interest in the joint operation or legal entity. Payments will be directly attributed to legal entity members for the purpose of complying with §1470.24(g).

(k) **Unique tax identification numbers.** Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other CSP contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of §1470.36.

(i) **Payment data.** NRCS will maintain detailed and segmented data on CSP contracts and payments to allow for quantification of the amount of payments made for:

1. Installing and adopting additional activities;
2. Improving, maintaining, and managing existing activities;
3. Participation in research and demonstration or pilot projects; and
4. Development and periodic assessment and evaluation of conservation stewardship plans developed under this rule.

§ 1470.25 **Contract modifications and transfers of land.**

(a) NRCS may allow a participant to modify a conservation stewardship contract if NRCS determines that the modification is consistent with achieving the purposes of the program.

(b) NRCS will allow modification to a conservation stewardship contract to remove contract acres enrolled in the CRP, WRP, or GRP or other Federal or State programs that offer greater natural resource protection. Such modifications are consistent with the purposes of CSP. Participants will not be subject to liquidated damages or refund of payments received for enrolling land in these programs.

(c) NRCS will not allow a participant to modify a conservation stewardship contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved by NRCS for renewal or other exceptional cases as determined by the Chief.

(d) Land under contract will be considered transferred if the participant loses control of the acreage for any reason.

(i) The participant is responsible to notify NRCS prior to any voluntary or involuntary transfer of land under contract;

(ii) If all or part of the land under contract is transferred, the contract terminates with respect to the transferred land unless:

1. The transferee of the land provides written notice within 60 days to NRCS that all duties and rights under the contract have been transferred to, and assumed by, the transferee, and
2. The transferee meets the eligibility requirements of the program; and
3. Contract payment adjustments due to modifications will be reflected in the fiscal year following the modification.

§ 1470.26 **Contract renewal.**

(a) At the end of an initial conservation stewardship contract, NRCS may allow a participant to renew the contract to receive payments for one additional 5-year period, subject to the availability of funds, if they meet criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must:

1. Be in compliance with the terms of their initial contract as determined by NRCS;
2. Add any newly acquired eligible land that is part of the agricultural operation and meets minimum treatment
criteria as established and determined by NRCS;
(3) At a minimum, meet stewardship thresholds for at least two priority resource concerns; and
(4) Agree to adopt additional conservation activities to address at least one additional priority resource concern during the term of the renewed conservation stewardship contract.

§ 1470.27 Contract violations and termination.

(a) The State Conservationist may terminate, or by mutual consent with the participants, terminate a contract where:
(1) The participants are unable to comply with the terms of the contract as the result of conditions beyond their control; or
(2) As determined by the State Conservationist, it is in the public interest.

(b) If a contract is terminated in accordance with the provisions of paragraph (a) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant’s control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the contract terms or documents incorporated therein, NRCS will give the participant a period of time, as determined by NRCS, to correct the violation and comply with the contract terms and attachments thereto. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:
(1) Has submitted false information or filed a false claim;
(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of §1470.36; or
(3) Engaged in actions that are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating CSP contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation activity has achieved the expected conservation performance improvement, is not adversely affected by the violation or the absence of other conservation activities that would have been installed under the contract, and has met the associated operation and maintenance requirement of the activity; and
(2) NRCS will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case—
(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant’s control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program, and
(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration
§ 1470.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who would have an interest in
§ 1470.31 Appeals.
A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation activities are not subject to appeal.

§ 1470.32 Compliance with regulatory measures.
Participants will be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

§ 1470.33 Access to agricultural operation.
NRCS, or its authorized representative, will have the right to enter an agricultural operation for the purpose of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access will include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS, or its authorized representative, will make an effort to contact the participant prior to the exercise of this provision.

§ 1470.34 Equitable relief.
(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. The financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.
(b) If a participant has been found in violation of a provision of the conservation stewardship contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

§ 1470.35 Offsets and assignments.
(a) Any payment or portion thereof due to any participant under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.
(b) Any participant entitled to any payment may assign such payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1470.36 Misrepresentation and scheme or device.
(a) If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be determined ineligible immediately.
(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.
(c) A participant will refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such participant with respect to all CSP contracts if they are determined to have:
§ 1470.37

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(d) Participants determined to have committed actions identified in paragraph (c) of this section will:

(1) Have their interest in all CSP contracts terminated; and

(2) In accordance with §1470.27(e), may be determined by NRCS to be ineligible for future NRCS-administered conservation program funding.

§ 1470.37 Environmental credits for conservation improvements.

NRCS believes that environmental benefits will be achieved by implementing conservation activities funded through CSP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. Any requirements related to these environmental credits must be compatible with the purposes of the contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for CSP-funded improvements are met, consistent with §1470.21 and §1470.23. Where actions may impact the land and conservation activities under a CSP contract, NRCS will at the request of the participant, assist with the development of an O&M compatibility assessment prior to the participant entering into any credit agreement.
SUBCHAPTER C—EXPORT PROGRAMS

PART 1484—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Subpart A—General Information

§ 1484.10 What is the effective date of this part?

This part applies to activities that are conducted in accordance with the Cooperators’ FY 2000 and subsequent marketing plan years. The Cooperator Program is administered by personnel of the Foreign Agricultural Service.


§ 1484.11 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for emergency review and reinstatement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). OMB has previously assigned control number 0551-0026 for this information collection.
§ 1484.12 What is the Cooperator program?

(a) Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. FAS does not provide brand promotion assistance to Cooperators under this program.

(b) FAS enters into project agreements with those eligible nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Project agreements involve the promotion of agricultural commodities on a generic basis. Project agreements do not involve activities targeted directly toward consumers purchasing as individuals. Activities must contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints and export growth opportunities by focusing on matters such as reducing infrastructural or historical market impediments; improving processing capabilities; modifying codes and standards; and identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

(c) The Cooperator program generally operates on a reimbursement basis. FAS policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage or sole benefit from program activities.

§ 1484.13 What special definitions apply to the Cooperator program?

For purposes of this part the following definitions apply:

Activity—a specific market development effort undertaken by a Cooperator to address a constraint or opportunity.

Administrator—the Vice President, CCC, who also serves as Administrator, FAS, USDA, or designee.

Agricultural commodity—an agricultural commodity, food, feed, fiber, wood, livestock or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm, or harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

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

Commodity Division—the office within the Foreign Agricultural Service responsible for the commodity covered by the project agreement.

Compliance Review Staff—the office within the Foreign Agricultural Service responsible for performing periodic reviews of Cooperators to ensure compliance with this part.

Constraint—a condition in a particular country or region which needs to be addressed in order to develop, expand, or maintain exports of a specific U.S. agricultural commodity.

Consumer promotion—activities that are designed to directly influence consumers by changing attitudes or purchasing behaviors towards U.S. agricultural products.

Contribution—the cost-share expenditure made by a Cooperator or the U.S. industry in support of an activity; e.g., money, personnel, materials, services, facilities, or supplies.

Cooperator or U.S. Cooperator—a nonprofit U.S. agricultural trade organization which has entered into a foreign market development agreement with FAS.

Cooperator Program—the Foreign Market Development Cooperator Program.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

Division Director—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

Eligible commodity—an agricultural commodity that is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.
Eligible trade organization—a United States trade organization that promotes the exports of one or more United States agricultural commodities or products and does not have a business interest in or receive remuneration from specific sales of agricultural commodities or products.

Expenditure—transfer of funds.

FAS—Foreign Agricultural Service, USDA.

Foreign third party—a foreign entity that assists, in accordance with this part, in promoting the export of a U.S. agricultural commodity.

Generic promotion—a promotion that does not involve the exclusive or predominant use of a single company name or logo(s) or brand name(s) of a single company.

Market—a country or region in which an activity is conducted.

Marketing plan year—the program year beginning on October 1 and ending on September 30, during which Cooperators can undertake activities, consistent with this part and their agreements with FAS, and seek reimbursement. For example, marketing plan year 2000 begins on October 1, 1999, and ends on September 30, 2000.

Project agreement—a contract between FAS and a Cooperator in which the basic working relationship is described including the program and financial obligations of each.

Project funds—the funds made available to a Cooperator under a project agreement, and authorized for expenditure in accordance with this part.

Property—furniture or equipment having a useful life of over one year and an acquisition cost of $500 or more.

STRE—sales and trade relations expenditures.

Trade team—a group of individuals engaged in an activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

USDA—the United States Department of Agriculture.

§ 1484.14 Is my organization eligible to participate in the Cooperator program?

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization and contribute at least 50 percent of the value of resources provided by FAS for activities conducted under the project agreement.

(b) FAS may require that a project agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, FAS will take into account such factors as past Cooperator contributions, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity’s ability to increase its contribution.

(c) FAS will enter into Cooperator agreements only for the promotion of eligible commodities.

Subpart B—Application and Fund Allocation

§ 1484.20 How can my organization apply to the Cooperator program?

FAS will publish a Notice in the Federal Register that it is accepting applications for participation in the Cooperator program for a specified marketing plan year. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a strategic plan, and performance measures. FAS may request any additional information which it deems necessary to evaluate a Cooperator program application.

(a) Basic applicant and program information. All Cooperator program applications shall contain:

1. The name and address of the applicant;
2. The name of the Chief Executive Officer (or designee);
3. The name and telephone number of the applicant’s primary contact person;
4. A description of management and administrative capability;
5. The name(s) of the person(s) responsible for managing the program;
§ 1484.21 How does FAS determine which Cooperator program applications are approved?

(a) General. FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify those projects that would demonstrate a clear, long-term agricultural trade strategy by market or product and a

(6) A description of prior export promotion experience;
(7) A description of the organization, its membership, and membership criteria;
(8) A list of affiliated organizations;
(9) The applicant’s Federal Tax Identification Number;
(10) The dollar amount of FAS resources requested under the Cooperator program;
(11) The value of the applicant’s contribution, stated in dollars or as a percentage of paragraph (a)(10) of this section;
(12) The value of contributions from other sources, stated in dollars or as a percentage of paragraph (a)(10) of this section;
(13) A description of the eligible commodity(s); the associated commodity aggregate code(s), obtained from FAS; and the percentage of U.S. origin content by weight, exclusive of added water; and
(14) A certification statement, and, if requested by the Deputy Administrator, a written explanation supporting the certification, that any funds received will supplement, but not supplant, any private or industry funds or other contributions to program activities. The written explanation, if necessary, shall indicate why the Cooperator is unlikely to carry out the activities without Federal financial assistance. The certification shall also state that information contained in the application is true and accurate and that all records supporting the claim that project funds do not supplant other funds will be made available to authorized officials of the U.S. Government.

(b) Strategic plan and performance measures. All Cooperator program applications shall also contain:

(1) A description of the U.S. and world market situation for the eligible commodity;
(2) Data summarizing historical and projected U.S. production, U.S. exports to the world, world trade, and U.S. market share;
(3) A summary of proposed activity budgets by country or region;
(4) A summary of proposed administrative budgets by country or region;
(5) A list of all countries that define any designated region;
(6) For each country or region for which activities are proposed:

(i) A market assessment, including the constraint(s) impeding U.S. exports, the export growth opportunities, the performance of competing suppliers, expected changes in demand, etc.;
(ii) The long-term strategy that will be used to counteract the constraints and achieve additional U.S. exports;
(iii) Previous activities, performance, and evaluation results;
(iv) Projected export goals and U.S. market share; and
(v) Performance indicators against which future success in addressing the constraint(s) or opportunities may be measured;
(7) A description of all proposed activities, including the requested FAS resources and the specific goals and benchmarks to be used to measure the effectiveness of each activity;
(8) A justification for any new overseas office, including a list of job titles, corresponding position descriptions, salary ranges, and any request for approval of a salary above the Foreign Service National (FSN) salary plan. To request approval of a salary above the FSN salary plan, the Cooperator shall include a detailed description of both the duties and responsibilities of the position, and of the qualifications and background of the individual concerned. The Cooperator shall also justify, based on a verifiable local salary survey or other documented local salary information, why the highest FSN salary level is inappropriate.

§ 1484.21 How does FAS determine which Cooperator program applications are approved?

(a) General. FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify those projects that would demonstrate a clear, long-term agricultural trade strategy by market or product and a
Commodity Credit Corporation, USDA

§ 1484.31

program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country or region goals. These performance indicators are part of FAS’ resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

(b) Approval criteria. FAS will consider a number of factors when reviewing proposed projects, including:

(1) The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;

(2) The organization’s willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;

(4) The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets;

(5) The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects;

(6) Past program results and evaluations, if applicable; and

(7) Previous Cooperator program funding.

§ 1484.32

How are Cooperator program funds allocated?

After determining which applications to recommend for approval, the Commodity Divisions recommend funding levels for the approved applicants within their respective divisions. Applications then compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available. The method for applying the following criteria will be described in the Cooperator program announcement in the FEDERAL REGISTER:

(a) Contribution Level (40%).

(b) Past Export Performance (20%).

(c) Past Demand Expansion Performance (20%).

(d) Future Demand Expansion Goals (10%).

(e) Accuracy of Past Demand Expansion Projections (10%).

Subpart C—Program Operations

§ 1484.33

How does FAS formalize its working relationship with approved Cooperators?

FAS will notify each applicant in writing of the final disposition of its application. FAS will send a program agreement, allocation approval letter, and a signature card to each approved applicant. The allocation approval letter will specify any special terms and conditions applicable to a Cooperator’s program, including the required level of Cooperator contribution. An applicant that accepts the terms and conditions contained in the program agreement and allocation approval letter should so indicate by having its Chief Executive Officer sign the program agreement and submit the signed agreement to the Director, Marketing Operations Staff, FAS, USDA. Final agreement shall occur when the Administrator signs the agreement on behalf of FAS. The application, the program agreement, the allocation approval letter, and this part shall establish the terms and conditions of a Cooperator agreement between FAS and the approved applicant.

§ 1484.34

Who acts on behalf of each Cooperator?

The Cooperator shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator’s Chief Executive Officer to the Director, Marketing Operations Staff, FAS, USDA, prior to the start of the marketing plan year. The Cooperator shall immediately notify the Director of any changes in signatories (e.g., removal or addition of individuals, name changes,
§ 1484.32 Must Cooperators follow specific employment practices?

(a) A Cooperator shall enter into written contracts with all overseas employees and ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators are cautioned to consult local laws regarding currency restrictions.

§ 1484.33 Must Cooperators follow certain financial management guidelines?

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each Cooperator shall maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable marketing plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. A Cooperator shall also maintain all documents related to employment, such as employment applications, contracts, position descriptions, leave records, and salary changes; and all records pertaining to contractors. A Cooperator shall also maintain adequate documentation related to the proper disposition of all property purchased by the Cooperator and for which the Cooperator is reimbursed with program funds.

(c) A Cooperator shall maintain its records of expenditures and contributions in a manner that allows it to provide information by marketing plan year, country or region, activity number, and cost category. Such records shall include:

1. Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);
2. Original receipts for any other program related expenditure in excess of $25.00;
3. The exchange rate used to calculate the dollar equivalent of each expenditure made in a foreign currency and the basis for such calculation;
4. Copies of reimbursement claims;
5. An itemized list of claims charged to the Cooperator’s FMD account;
6. Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, and travel vouchers; and
7. Documentation supporting contributions including: the date(s), purpose, and location(s) of each activity for which cash, goods, or services were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contributions. Cooperators must retain, and make available for audit, documentation related to claimed contributions.

(d) Upon request, a Cooperator shall provide to FAS the original documents which support the Cooperator’s reimbursement claims. FAS may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1484.34 Must Cooperators adhere to specific standards of ethical conduct?

(a) A Cooperator shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out.

(b) Neither a Cooperator nor its affiliates shall make export sales of agricultural commodities covered under the terms of a project agreement. Neither a Cooperator nor its affiliates
shall charge a fee for facilitating an export sale. For the purposes of this paragraph, “affiliate” means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund. A Cooperator may collect check-off funds and membership fees that are required for membership in the Cooperator’s organization.

(c) The Cooperator shall not use program activities or program funds to promote private self interests or conduct private business, except as members of sales teams.

(d) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested, a Cooperator shall submit such selection criteria to FAS for approval.

(e) All Cooperators should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a project agreement.

(f) The Cooperator must report any actions or circumstances that have a bearing on the propriety of program activities to the Attache/Counselor and the Cooperator’s U.S. office shall report such actions in writing to the appropriate Division Director.

§ 1484.35 Must Cooperators follow specific contracting procedures?

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. Neither FAS nor any other agency of the United States Government or any official or employee of FAS or the United States Government has any obligation or responsibility with respect to Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

§ 1484.36 How do Cooperators dispose of disposable property?

(a) Property purchased by the Cooperator, and for which the Cooperator is reimbursed with project funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With FAS approval, transfer the goods to other Cooperators for their activities, or to a foreign third party;

(3) Upon Attache/Counselor approval, donate the goods to a local charity, or
§ 1484.37 Must Cooperators adhere to Federal Travel Regulations?

Travel shall conform to the U.S. Federal Travel Regulation (41 CFR Chapters 300 through 304) and air travel shall conform to the requirements of the “Fly America Act” (49 U.S.C. 1517). The Cooperator shall notify the Attache/Counselor in the destination countries in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attache/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel may result in disallowance of the expenses related to the travel.

§ 1484.38 Can a Cooperator keep proceeds generated from an activity?

Any income or refunds generated from an activity, i.e., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be repaid by submitting a check payable to Commodity Credit Corporation or by offsetting the Cooperator’s next reimbursement claim.

7 CFR Ch. XIV (1–1–14 Edition)

Subpart D—Contributions and Reimbursements

§ 1484.50 What cost share contributions are eligible?

(a) The Cooperator shall pay all costs necessary for the operation of the Cooperator’s U.S. office.

(b) In calculating the amount of contributions that it will make, and the contributions it will receive from a U.S. industry or a State agency, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

1. Expenditures will be made in furtherance of the Cooperator’s overall foreign market development program;

2. The contributor has not been or will not be reimbursed by any other source for such costs; and

3. The contribution is made during the period covered by the project agreement.

(c) Subject to paragraph (b) of this section, eligible contributions are:

1. Cash;

2. Compensation paid to personnel;

3. The cost of acquiring materials, supplies, or services;

4. The cost of office space;

5. A reasonable and justifiable portion of general administrative costs and overhead;

6. Payments for indemnity and fidelity bond expenses;

7. The cost of business cards;

8. The cost of seasonal greeting cards;

9. Fees for office parking;

10. The cost of subscriptions to publications;

11. The cost of activities conducted overseas;

12. Credit card fees;

13. The cost of any independent evaluation or audit that is not required by FAS to ensure compliance with program requirements;

14. The cost of giveaways, awards, prizes and gifts;

15. The cost of product samples;
Commodity Credit Corporation, USDA

§ 1484.53

(16) Fees for participating in U.S.
government activities;
(17) The cost of air and local travel in
the United States related to a foreign
market development effort;
(18) Transportation and shipping
costs;
(19) The cost of displays and pro-
motional materials;
(20) Advertising costs;
(21) Reasonable travel costs and ex-
penses related to undertaking a foreign
market development activity;
(22) Payment of employee's or con-
tractor's share of personal taxes;
(23) The cost associated with trade
shows, seminars, entertainment and
STRE conducted in the United States;
(24) Product research that is under-
taken to benefit an industry and has a
specific export application; and
(25) Consumer promotions.

§ 1484.51 What are ineligible contribu-
tions?

(a) The following are not eligible con-
tributions:
(1) Any portion of salary or com-
pensation of an individual who is the
target of a promotional activity;
(2) Any land costs other than allow-
able costs for office space;
(3) Depreciation;
(4) The cost of refreshments and re-
lated equipment provided to office
staff;
(5) The cost of insuring articles
owned by private individuals;
(6) The cost of any arrangement
which has the effect of reducing the
selling price of an agricultural com-
modity;
(7) The cost of product development
or product modifications;
(8) Slotting fees or similar sales ex-
penditures;
(9) Funds, services, or personnel pro-
vided by any U.S. government agency;
(10) Capital investments made by a
third party, such as permanent struc-
tures, real estate, and the purchase of
office equipment and furniture;
(11) The value of any services gen-
erated by a Cooperator or third party
which involve no expenditure by the
Cooperator or third party, e.g., free
publicity;
(12) Membership fees in clubs and so-
cial organizations; and
(13) costs included as contributions
for any other federally-assisted project
or program.

(b) The Deputy Administrator shall
determine, at the Deputy Administra-
tor's discretion, whether any cost not
expressly listed in this section may be
included by the Cooperator as an eligi-
ble contribution.

§ 1484.52 What are the guidelines for
computing the value of non-cash
contributions?

(a) Computing the value of an individ-
ual's time. If an individual's salary is
known, allocate the individual's salary
on the basis of time spent on foreign
market development activities. If the
individual's salary is unknown, claim
up to the equivalent of a step 10, GS–15
for professional personnel and up to the
current estimated industry rate at the
person's level of employment for non-
professional personnel.

(b) Computing the value of indirect ex-
penditures. Allocate value on the basis
of sound management and accounting
procedures when considering indirect
expenditures, such as overhead and fa-
cilities, which are furnished by the in-
dustry.

§ 1484.53 What are the requirements
for documenting and reporting con-
tributions?

(a) Each claimed contribution must
be documented by the Cooperator,
showing the method of computing non-
cash contributions, salaries, and travel
expenses.

(b) Each Cooperator must keep
records of the methods used to com-
pute the value of non-cash contribu-
tions, and

(1) Copies of invoices or receipts for
expenses paid by the U.S. industry and
not reimbursed by the Cooperator for
the joint activity; or

(2) If invoices are not available, an
itemized statement from the U.S. in-
dustry as to what costs it incurred pur-
suant to the joint activity; or

(3) If neither of the foregoing is avail-
able, a statement from the U.S. indus-
try as to what goods and services it
provided; or

(4) If none of the foregoing are avail-
able, a memo to the files of the U.S.
§ 1484.54 What expenditures may FAS reimburse under the Cooperator program?

(a) A Cooperator may seek reimbursement for an expenditure if:

(1) The expenditure is reasonable and has been made in furtherance of a market development activity; and

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

(b) Subject to paragraph (a) of this section, FAS will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising in print or electronic media or on billboards or posters;

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

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of promotional samples;

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

(6) Fees for participation in retail and trade exhibits and shows, and booth construction and transportation of related materials to such exhibits and shows;

(7) Trade seminars, including space rental, equipment rental, and duplication of seminar materials;

(8) Production and distribution of publications;

(9) Part-time contractors, such as interpreters, translators, and receptionists, to help with the implementation of promotional activities, such as trade shows, food service promotions, and trade seminars;

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to the limitation that FAS will not reimburse more than $1.00 per item;

(11) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, subject to the limitation that FAS shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(12) Foreign transfer, temporary lodging, and post hardship differential allowances for U.S. citizen employees;

(13) Approved salaries or compensation for non-U.S. citizens and non-U.S. contractors. Generally, FAS will not reimburse any portion of a non-U.S. citizen employee’s compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non-U.S. citizen in accordance with §1550.20 (b)(8);

(14) A retroactive salary adjustment that conforms to a change in FSN salary plans, effective as of the date of such change;

(15) Accrued annual leave at such time when employment is terminated or when required by local law;

(16) Overtime paid to clerical staff;

(17) Fees for professional and consultant services;

(18) Air travel, plus passports, visas, and inoculations, subject to the limitation that FAS will not reimburse any portion of air travel in excess of the full fare economy rate or when the Cooperator fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the Deputy Administrator determines it was impractical to provide such notification;

(19) Per diem, subject to the limitation that FAS will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulation (41 CFR Chapters 300 through 304);

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

(21) Other allowable expenditures while in travel status as authorized by
§ 1484.55 What expenditures may not be reimbursed under the Cooperator program?

(a) FAS will not reimburse expenditures made prior to approval of a Cooperator’s program, unreasonable expenditures, or any cost of:

(1) Expenses, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from employment terms, conditions, contract provisions, or related formalities;

(2) Product development, product modification, or product research;

(3) Product samples;

(4) Slotting fees or similar sales expenditures;

(5) The purchase, construction, or lease of space for permanent displays, i.e., displays lasting beyond one marketing plan year;

(6) Office parking fees;

(7) Coupon redemption or price discounts;

(8) Refundable deposits or advances;

(9) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of $1.00 per item;

(10) Alcoholic beverages that are not an integral part of a promotional activity;

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

(12) Travel of applicants for employment interviews;

(13) Unused non-refundable airline tickets or associated penalty fees, except where travel is restricted by U.S. government action or advisory;
§ 1484.56 How are Cooperators reimbursed?

(a) A format for reimbursement claims is available from the Director, Marketing Operations Staff, FAS, USDA. Claims for reimbursement shall contain at least the following information:

(1) Activity code;
(2) Country code;
(3) Cost category;
(4) Amount to be reimbursed or credited;
(5) If applicable, any reduction in the amount of reimbursement claimed to offset FAS demand for refund of amounts previously reimbursed, and reference to the relevant Compliance Report; and
(6) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the Cooperator’s U.S. office to the Director, Marketing Operations Staff, FAS, USDA.

(c) FAS will not reimburse claims submitted later than 6 months after the end of a marketing plan year.

(d) If FAS overpays a reimbursement claim, the Cooperator shall repay FAS within 30 days the amount of the overpayment either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(e) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall within 30 days of such disallowance repay FAS the amount owed either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(f) The Cooperator shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1484.57 Will FAS make advance payments to a Cooperator?

(a) Policy. In general, FAS operates the Cooperator program on a reimbursable basis.

(b) Exception. Upon request, FAS may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by
Commodity Credit Corporation, USDA

§ 1484.72

FAS only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. FAS will provide this type of advance expense payment in lieu of direct payments by FAS to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. Normally, special advance payments received from FAS must be liquidated by the Cooperator within 90 days from the date of receipt. Prior to making an advance, FAS may require the participant to submit security in a form and amount acceptable to FAS to protect FAS’ financial interests. FAS will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior marketing plan year. Cooperators shall deposit and maintain advances in insured, interest-bearing accounts, unless such accounts are prohibited by law or custom of a host country.

(c) Refunds due FAS. A participant shall return any unexpended portion of an advance, plus any interest earned, either by submitting a check payable to FAS or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1484.70 Must Cooperators report to FAS?

(a) End-of-year contribution report. Not later than January 31 of the year following the completion of the marketing plan year, a Cooperator shall submit two copies of a report which identifies contributions made by the Cooperator and the U.S. industry during that marketing plan year. A suggested format of a contribution report is available on the FAS home page (http://www.fas.usda.gov/mos/programs/fnotice.html) on the Internet or from the Director, Marketing Operations Staff, FAS, USDA.

(b) Trip reports. Not later than 45 days after completion of travel (other than local travel), a Cooperator shall submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, or specific accomplishments.

(c) Research reports. Not later than 6 months after the end of its marketing plan year, a Cooperator shall submit a report on any research conducted in accordance with its application.

(d) Submission of reports. A Cooperator shall submit the reports required by this section to the appropriate Division Director. Trip reports and research reports shall also be submitted to the appropriate Attache/Counselor(s). All reports shall be in English and include the Cooperator’s agreement number, the countries and period covered, and the date of the report.

(e) Additional reports. FAS may require the submission of additional reports.

(f) Independent audit reports. A Cooperator shall provide to the FAS Compliance Review Staff, upon request, any audit reports by independent public accountants.

§ 1484.71 Are Cooperator documents subject to the provisions of the Freedom of Information Act?

(a) Documents submitted to FAS by Cooperators are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, Subpart A—Official Records, and, specifically, 7 CFR 1.11—Handling Information from a Private Business.

(b) If requested by a person located in the United States, a Cooperator shall provide to such person a copy of any document in its possession or control containing market information developed and produced under the terms of its agreement. The Cooperator may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) The results of any research conducted by a Cooperator under an agreement shall be the property of the U.S. Government.

§ 1484.72 How is program effectiveness measured?

(a) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C.
§ 1484.73 Are Cooperators penalized for failing to make required contributions?

A Cooperator’s contribution requirement is specified in the Cooperator program allocation letter. If a Cooperator fails to contribute the amount specified in its allocation approval letter, the Cooperator shall pay to Commodity Credit Corporation in U.S. dollars the difference between the amount it has contributed and the amount specified in the allocation approval letter. A Cooperator shall remit such payment by December 31 following the end of the marketing plan year.

§ 1484.74 How is Cooperator program compliance monitored?

(a) The Compliance Review Staff (CRS), FAS, performs periodic on-site reviews of Cooperators to ensure compliance with this part.

(b) In order to verify that federal funds received by a Cooperator do not supplant private or U.S. industry funds or contributions pursuant to §1550.20(a)(14), FAS will consider the Cooperator’s overall marketing budget from year to year, variations in promotional strategies within a country or region, and new markets.

(c) The Director, CRS, will notify a Cooperator through a compliance report when it appears that Commodity Credit Corporation may be entitled to recover funds from that Cooperator. The compliance report will state the basis for this action.

§ 1484.75 How does a Cooperator respond to a compliance report?

(a) A Cooperator shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. This response shall include any money owed to Commodity Credit Corporation if the Cooperator does not wish to contest the compliance report. The Director, CRS, at the Director’s
Can a Cooperator appeal the determinations of the Deputy Administrator?

(a) The Cooperator may appeal the determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The Administrator may request a hearing.

(b) If the Cooperator submits its appeal and requests a hearing, the Administrator, or the Administrator’s designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, the Administrator may have a transcript prepared at FAS’s expense.

(c) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Administrator will be the final determination of FAS. The Cooperator must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

Subpart A—Reserve

Subpart B—Market Access Program

Sec. 1485.10 General purpose and scope.
1485.11 Definitions.
1485.12 Participation eligibility.
1485.13 Application process.
1485.14 Application review and formation of agreements.
1485.15 Operational procedures for brand programs.
1485.16 Contribution rules.
1485.17 Reimbursement rules.
1485.18 Reimbursement procedures.
1485.19 Advances.
1485.20 Employment practices.
1485.21 Financial management.
1485.22 Reports.
1485.23 Evaluation.
1485.24 Compliance reviews and notices.
1485.25 Failure to make required contributions.
1485.26 Submissions.
1485.27 Disclosure of program information.
1485.28 Ethical conduct.
1485.29 Contracting procedures.
1485.30 Property standards.
1485.31 Anti-fraud requirements.
1485.32 Program income.
1485.33 Amendment.
1485.34 Noncompliance with an agreement.
1485.35 Suspension, termination, and closeout of agreements.
1485.36 Paperwork reduction requirements.


Source: 60 FR 6363, Feb. 1, 1995, unless otherwise noted.

Editorial Note: Nomenclature changes to part 1485 appear at 61 FR 58785, Nov. 19, 1996.
\section{Subpart B—Market Access Program}

\textit{SOURCE:} 77 FR 29499, May 17, 2012, unless otherwise noted.

\section*{§ 1485.10 General purpose and scope.}

(a) This subpart sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Market Access Program (MAP).

(b)(1) In addition to the provisions of this subpart, other regulations of general application issued by the U.S. Department of Agriculture (USDA), including the regulations set forth in Chapter XXX of this title, “Office of the Chief Financial Officer, Department of Agriculture,” may apply to the MAP and MAP Participants, to the extent that these regulations of general application do not directly conflict with the provisions of this subpart. These include, but are not limited to:

(i) 7 CFR part 1, subpart A—Official Records

(ii) 7 CFR part 3—Debt Management

(iii) 7 CFR part 15, subpart A—Non-discrimination

(iv) 7 CFR part 3015—Uniform Federal Assistance Regulations

(v) 7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

(vi) 2 CFR part 417—Governmentwide Debarment and Suspension (Nonprocurement)

(vii) 7 CFR part 3018—New Restrictions on Lobbying

(viii) 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

(ix) 7 CFR part 3021—Governmentwide requirements for drug-free workplace (financial assistance)

(x) 7 CFR part 3052—Audits of States, Local Governments, and Non-profit Organizations


(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are also applicable to the MAP and the regulations set forth in this part.

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

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

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

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

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

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

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

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

(c) Under the MAP, CCC may provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities and products. MAP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. CCC expects all activities that occur in the United States for which MAP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the MAP Participant's approved MAP program. When considering eligible nonprofit U.S. trade organizations, CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.
Commodity Credit Corporation, USDA

§ 1485.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity—a specific foreign market development effort undertaken by a MAP Participant.

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

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

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

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, teambuilding, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy);

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

Approval letter—a document by which CCC informs an applicant that its MAP application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the MAP Participant before it becomes effective.

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

Brand participant—a small-sized U.S. for-profit entity, or a U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the MAP brand promotion program of another MAP Participant. This definition does not include any U.S. agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

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

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

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

Credit memo—a commercial document, also known as a credit memorandum, issued by the MAP Participant to a commercial entity that owes the MAP Participant a certain sum. A credit memo is used when the MAP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the MAP Participant owes the entity against the amount the entity owes to the MAP Participant.

Demonstration projects—activities involving the erection or construction of a structure or facility or the installation of equipment.
Expenditure—either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

FAS—Foreign Agricultural Service, USDA.
FAS Web site—a Web site maintained by FAS providing information on MAP. It is currently accessible at www.fas.usda.gov/mos/programs/map.asp.
Foreign third party—a foreign entity that a MAP Participant works with to promote the export of a U.S. agricultural commodity under the MAP program.
Generic promotion—an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally. A generic promotion activity may include the promotion of a foreign brand (i.e., a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted U.S. agricultural commodity or product from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos or brand names. However, in that case, the MAP Participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (i.e., a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.
MAP—the Market Access Program.
MAP Notice—Market Access Program notices are documents that CCC issues for informational purposes. These MAP notices are made available electronically at http://www.fas.usda.gov/mos/programs/mnotice.html. These notices have no legal effect. They are intended to alert MAP Participants of various aspects of CCC’s current administration of the MAP program. For example, CCC issues MAP notices to alert MAP Participants of procedures for requesting advances, applicable federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.
MAP Participant or Participant—an entity that has entered into a MAP program agreement with CCC.
Market—the country or countries targeted by an activity.
Notification—a document from the MAP Participant by which the MAP Participant proposes to CCC changes to the activities and/or funding levels in an approved MAP program agreement and/or approval letter.
Product samples—a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (e.g., fresh or processed), independent of the ultimate utilization of the sample. Product samples might be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.
Program agreement—a document entered into between CCC and a MAP Participant setting forth the terms and conditions of approved activities under MAP, including any subsequent amendments to such agreement.
Program year—Unless otherwise agreed in writing between CCC and a MAP Participant, a 12-month period during which a MAP Participant can undertake activities consistent with this subpart and its program agreement and approval letter with CCC.
Promoted commodity—a U.S. agricultural commodity the sale of which is the intended result of a promotion activity.
Sales and trade relations expenditures (STRE)—expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion.
Sales team—a group of individuals engaged in an approved activity intended to result in specific sales.
Small-sized entity—a U.S. commercial entity that meets the small business
Commodity Credit Corporation, USDA

§ 1485.13

size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG—the acronym for State Regional Trade Group. An SRTG is a non-profit association of state-funded agricultural promotion agencies.

Supergrade—a salary level above the reimbursable salary range generally allowable under MAP, which CCC may approve on a case by case basis. This salary level is available only for certain non-U.S. employees who direct MAP Participants’ overseas offices.

Temporary contractor—a contractor, typically a consultant or other highly paid professional, that is hired on a short term basis to assist in the performance of an activity.

Trade team—a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

UES Web site—a Web site maintained by FAS through which applicants may apply online to MAP and any other USDA market development program. The Web site is currently accessible at www.fas.usda.gov/mos/ues/unified.asp.

Unified Export Strategy (UES)—is a standardized online Internet application developed by USDA and available for use by entities to apply to any USDA market development program, including the MAP.

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

USDA—the United States Department of Agriculture.

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

§ 1485.12 Participation eligibility.

To participate in the MAP, an entity shall be:
(a) A nonprofit U.S agricultural trade organization;
(b) A nonprofit SRTG;
(c) A U.S. agricultural cooperative;
or
(d) A State agency.

§ 1485.13 Application process.

(a) General application requirements. CCC will periodically publish a Notice in the FEDERAL REGISTER that it is accepting applications for participation in MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice and in these regulations. Applicants are encouraged to submit a UES through the UES Internet Web site, but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides MAP funds to brand participants for branded promotion. An applicant who is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

1. Applicant and program information.
   (i) All applications shall contain:
   (A) The name, address, and Internet location of the home page of the applicant organization;
   (B) The name of the applicant’s Chief Executive Officer;
   (C) The name, telephone number, fax number, and email address of the applicant’s primary contact person;
   (D) The name(s) of the person(s) responsible for managing the proposed program;
   (E) A description of the applicant organization, including the type of organization of the applicant (e.g., non-profit SRTG), its mission, and the statutory authorities by which it is constituted and under which it operates, if applicable;
   (F) Tax exempt identification number of the applicant, if applicable;
   (G) Beginning and ending dates for proposed program year (mm/dd/yyyy-mm/dd/yyyy);
(H) Dollar amount of CCC resources requested for generic activities;
(I) Dollar amount of CCC resources requested for brand activities;
(J) Total dollar amount of CCC resources requested;
(K) Percentage of CCC resources requested for general administrative expenses;
(L) A Dun and Bradstreet DUNS number for the applicant;
(M) A description of the applicant organization’s membership and membership criteria;
(N) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;
(O) A description of the applicant’s management and administrative capability;
(P) A description of the applicant’s prior export promotion experience;
(Q) Value, in U.S. dollars, of proposed contributions from the applicant or the applicant’s proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and
(R) Value, in U.S. dollars, of proposed contributions from other sources.
(ii) [Reserved]
(2) Program justification.
(i) All applications shall contain:
(A) A description of the promoted U.S. agricultural commodity(s), its harmonized tariff classification, the applicable commodity aggregate code (available from the UES Web site) and the percentage of U.S. origin content by weight, exclusive of added water;
(B) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s);
(C) The volume and value of exports of the promoted U.S. agricultural commodity(s) to the targeted markets for the most recent 3-year period;
(D) If the proposal is for 2 or more years, an explanation why the proposal should be funded on a multi-year basis; and
(E) A certification and, if requested by CCC, a written explanation supporting the certification that any funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities. An explanation, if one is requested, shall indicate why the applicant is unlikely to carry out the activities without Federal financial assistance. In determining whether Federal funds would supplement or supplant private or third-party funds or contributions, CCC will consider the applicant’s prior overall marketing budget in the MAP program from year-to-year, variations in promotional strategies within a country, and new markets.
(ii) [Reserved]
(3) Proposed program’s strategic plan.
(i) All applications shall include a strategic plan that contains:
(A) A description of overall long term strategic goals to be advanced by the proposed activities for the ensuing 3-5 years;
(B) An explanation of the organization’s strategic planning process and identification of priority target markets, including a summary of proposed budgets by country and commodity aggregate code;
(C) A description of the world market situation for the exported U.S. agricultural commodity(s);
(D) A description of competition from other exporters;
(E) An evaluation plan describing the applicant’s goals and the applicant’s plans for monitoring and evaluating performance towards achieving these goals. This evaluation plan should set forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed MAP program’s effectiveness will depend on a clear statement by the applicant of goals, method of achievement, and expected results of programming at regular intervals. The overall goal of the MAP and of individual Participants’ programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant may modify and resubmit this plan for re-approval at any time during the program year.
(F) For each target country, 5 years or as many years as are available of:
(J) Historical U.S. export data;
§ 1485.14 Application review and formation of agreements.

(a) General. CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. The selection process, by its nature, involves the exercise of judgment. CCC’s choice of Participants and proposed promotion projects requires that it consider and weigh a number of factors, some of which cannot be mathematically measured—e.g., market opportunity, market strategy, and management capability. CCC may require that an applicant participate in the MAP through another MAP Participant or applicant.

(b) Application review criteria. In assessing the likelihood of success of the applications it receives and deciding which it will approve, CCC will follow:

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

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

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

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

(c) Special rules governing demonstration projects funded with CCC resources.

(1) CCC will consider proposals for demonstration projects, provided:

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

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

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

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

(d) Universal Identifier and Central Contractor Registration (CCR)

(1) In accordance with 2 CFR Part 25, each entity that applies to the MAP program and does not qualify for an exemption under 2 CFR 25.110 must:

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

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

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

(2) [Reserved]

(e) Reporting Subaward and Executive Compensation Information. In accordance with 2 CFR Part 170, each entity that applies to the MAP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR Part 170 should it receive MAP funding.
results-oriented management principles and consider the following criteria:

1. The effectiveness of program management;
2. Soundness of accounting procedures;
3. The nature of the applicant organization. With respect to nonprofit U.S. trade organizations, preference will be given to those organizations with the broadest base of producer representation of and affiliated industry participation for the commodity being promoted;
4. Prior export promotion experience;
5. Appropriateness of staffing;
6. Adequacy of the applicant’s strategic plan in the following categories:
   i. Description of target market conditions;
   ii. Description of and plan for addressing market constraints and opportunities;
   iii. Breadth of industry participation in strategic planning process;
   iv. Strategic prioritization identified in proposed plan;
   v. Export volume and value and market share goals in each target country;
   vi. Description of evaluation plan and suitability of the plan for performance measurement; and
   vii. Past program results and/or evaluations, including program success stories.
7. Allocation factors. CCC determines which applications to approve and develops preliminary recommended funding levels for each approved application based on the following factors, in addition to those in paragraph (b) of this section. CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year’s MAP announcement in the FEDERAL REGISTER:
   1. Size of the budget request in relation to projected value of exports;
   2. Where applicable, size of the budget request in relation to actual value of exports in prior years;
   3. Where applicable, Participant’s past projections of exports compared with actual exports;
   4. Level of contributions by the applicant and by all other sources;
   5. Market share goals in target country(ies);
   6. The percentage by weight, exclusive of added water, of U.S. agricultural commodities contained in the promoted products;
   7. The degree of value-added processing in the United States; and
   8. Proposed MAP-funded general administrative and overhead costs compared to proposed MAP-funded direct promotional costs.
8. Approval decision.
   1. CCC will approve those applications that it determines best satisfy the criteria and factors specified above.
   2. Notification of decision. CCC will notify each applicant in writing of the final disposition of its application.
9. Formation of agreements. CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a MAP Participant’s program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.
10. Signature cards. The MAP Participant shall designate at least two individuals in its organization to sign program agreements and amendments, approval letters, reimbursement claims, and advance requests. The MAP Participant shall submit the signature card signed by those designated individuals and by the MAP Participant’s CEO to CCC. The Participant shall immediately notify CCC of any changes in signatories and shall submit a revised signature card accordingly.
Commodity Credit Corporation, USDA  

§ 1485.15  

(g) UES ID and passwords. CCC will provide each MAP Participant with IDs and passwords for the UES Web site, as necessary. MAP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to MAP Participants. MAP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.  

(h) A MAP Participant through which small-sized U.S. for-profit entities are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized entities or U.S. agricultural cooperatives as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this subpart.  

(i) Changes to activities and funding.  

(i) A MAP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the MAP Participant shall submit a notification to CCC.  

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

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

(2) Modifying existing activities and their funding levels.  

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

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

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

§ 1485.15 Operational procedures for brand programs.  

(a) Where CCC approves an application by a MAP Participant to run a brand promotion program that will include brand Participants, the MAP Participant shall establish brand program operational procedures. The MAP Participant annually shall submit to CCC for approval its proposed brand program operational procedures for such program year. CCC will notify all new and existing MAP Participants in writing in each Participant’s annual approval letter and through the FAS Web site as to applicable submission dates for and dates for approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements.  

(b) The MAP Participant shall not enter into any participation agreements with brand participants nor shall it implement any MAP brand activities for the applicable program year unless and until CCC has communicated in writing its approval of the proposed operational procedures to the MAP Participant.
(c) Participation agreements between MAP Participants and brand participants. Where CCC approves a MAP Participant’s application to run a brand promotion program that will include brand participants, the MAP Participant shall enter into participation agreements with brand participants. These agreements must:

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

(2) Make no allowance for extension or renewal;

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

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

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

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

(7) Include a written certification by the brand participant that it is either a small-sized entity as defined in this subpart or a U.S. agricultural cooperative;

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

(9) Require the brand participant to maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable program year and make such records and documents available upon request to authorized officials of the U.S. Government.

(d) MAP Participants may not provide assistance to a single entity including a entity reincorporated or reorganized under the same or different name if the reincorporated or reorganized entity is substantially similar to the pre-existing entity, for brand promotion in a single country for more than 5 years. Such 5 years do not need to be consecutive. Such 5-year period shall not begin prior to the 1994 program year or the brand participant’s first program year, whichever is later. In limited circumstances, CCC may waive the 5 year limitation if CCC determines that further assistance is in the best interests of the MAP. CCC
shall, at its discretion, decide whether a reincorporated or re-organized entity is substantially similar to the pre-existing entity for purposes of applying this 5-year rule. Brand participants’ participation in certain international trade shows in foreign countries will not be considered when determining such brand participants’ time in country for purposes of the 5 year graduation requirement. Such shows must meet two requirements: They are food or agricultural shows, with no less than 30% of exhibitors selling food or agricultural products, and they are international shows, meaning they target buyers, distributors and the like from more than one foreign country and no less than 15% of each show’s visitors are from countries other than the host country. CCC will compile a list of international trade shows that CCC exempts from the graduation requirement and such list will be announced to MAP Participants via a MAP notice issued on FAS’ Web site.

§ 1485.16 Contribution rules.

(a) In MAP generic promotion programs, a MAP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by CCC for all generic promotion activities proposed to be undertaken by the MAP Participant.

(b) In MAP brand promotion programs, a MAP Participant conducting its own brand promotion or a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.

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

(d) Eligible contributions.

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

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been and will not be reimbursed by any source for such costs.

(2) Subject to paragraph (d)(1) of this section, as well as applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) to the extent these principles do not directly conflict with the provisions of this subpart, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

(xiii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with program agreement or regulatory requirements;

(xiv) The cost of giveaways, awards, prizes and gifts;

(xv) The cost of product samples;

(xvi) Fees for participating in U.S. government sponsored or endorsed export promotion activities;

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee’s or contractor’s share of personal taxes;
(xix) STRE and the cost associated with trade shows, seminars, and entertainment conducted in the United States;
(xx) Other administrative expenses (e.g., supervisory travel from the U.S. to an overseas office); and
(xxi) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contributions:
(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;
(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as "backsell");
(iii) Any land costs other than allowable costs for office space;
(iv) Depreciation;
(v) The cost of refreshments and related equipment provided to office staff;
(vi) The cost of insuring articles owned by private individuals;
(vii) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;
(viii) The cost of product development, product modifications, or product research;
(ix) Slotting fees or similar sales expenditures;
(x) Membership fees in clubs and social organizations; and
(xi) Any expenditure for an activity prior to CCC’s approval of that activity.

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

§ 1485.17 Reimbursement rules.

(a) A MAP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was made in furtherance of an approved activity; and

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

(b) Subject to paragraphs (a) and (d) of this section, as well as applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) to the extent these principles do not directly conflict with the provisions of this subpart, for either brand or generic promotion activities, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the MAP promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the MAP Participant’s promoted products as well as for MAP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement).

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

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples);

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

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

(7) Subject to §1485.17(b)(18), expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the
United States, such expenditures are reimbursable only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS’ Web site;

(8) Subject to §1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for no more than two representatives of a single brand participant (or MAP Participant directly running its own brand program) to exhibit their company’s (or cooperative’s) products at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions;

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

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to MAP Participants via a MAP notice issued on FAS’ Web site. Reimbursement is available only when: (1) The items are described in detail with a per unit cost in an approved strategic plan and (2) distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

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

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

(14) An audit of a MAP Participant as required by Office of Management and Budget Circular A–133 if the MAP is the MAP Participant’s largest source of Federal funding;

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

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

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

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

(ii) The trade mission included representatives, as defined in §1485.17(b)(8), from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

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

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

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

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

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

(B) Reimbursement is conditional on the MAP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, MAP funds may be used to reimburse the travel and/or non-travel expenditures of only those MAP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this subsection, on a case by case basis, where: the trade show is segregated into product pavilions, or a company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the MAP Participant in writing; and

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

(c) Subject to paragraphs (a) and (d) of this section, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15 Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(2) Approved supergrade salaries for non-U.S. citizens and non-U.S. contractors stationed overseas;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, except for approved supergrades, or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the MAP Participant shall document by a salary survey or other means, except for approved supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN
Commodity Credit Corporation, USDA

§ 1485.17

salary plans, effective as of the date of such change;

(5) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(6) Overtime paid to clerical staff of approved MAP-funded overseas offices;

(7) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS–15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(8)(i) Subject to § 1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are covered only if the exhibit or show is: (1) A food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS’ Web site.

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

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

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

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

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

(iv) Alternatively, in lieu of reimbursing up to the business class rate in
such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14 hour rule for eligibility of reimbursement of business class travel or rest period expenses. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel;

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

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

(11) Organization costs for overseas offices approved in MAP program agreements. Such costs include incorporation fees, brokers’ fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and routine accounting and legal services required to maintain the overseas office;

(12) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, personal digital assistants);

(13) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay;

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

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

(16) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(17) Legal fees to obtain advice on the host country’s labor laws;

(18) Employment agency fees;

(19) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. MAP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions. MAP Participants may exceed Embassy guidelines only when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed.

MAP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the MAP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(20) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, emergency visitation travel for U.S. overseas employees allowed under the Foreign Affairs Manual published by the U.S. Department of State;

(21) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles;
(22) U.S. office(s) administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

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

(24) Subject to §1485.17(b)(18), domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: (1) A food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS’ Web site;

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

(26) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for one home office MAP Participant employee, one MAP Participant board member, or a state department of agriculture employee paid by the MAP Participant, when such individual accompanies foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

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

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

(iii) The MAP-sponsored traveler submits a follow-up trip report to CCC that includes the following:

(A) Purpose for the individual’s participation;

(B) Any pre-arranged business meetings;

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

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

(27) Approved demonstration projects;

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

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

(30) Business cards that target a foreign audience;

(31) Expenditures associated with developing, updating, and servicing Web sites on the Internet that: Contain a message related to exporting or international trade, include a discernible “link” to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by the appropriate FAS commodity division. Expenditures related to Web sites or portions of Web sites that are accessible only to an organization’s members are not reimbursable. Reimbursement claims for Web sites that include any sort of “members only” sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(32) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities; and

(33) Membership fees in professional, industry-related organizations.

(d) CCC will not reimburse any cost of:
(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, judgments or payments relating to legal suits, challenges or disputes;

(3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase of, construction of, or lease of space for permanent, non-mobile displays, i.e., displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from CCC of such construction or purchase;

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

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

(10) Refundable deposits or advances;

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

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

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

(14) Travel of applicants for employment interviews;

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

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

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the MAP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in §1485.17(c)(22) and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved MAP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR Parts 301 through 304);

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

(28) Payment of U.S. and foreign employees’ or contractors’ share of personal taxes, except where a foreign country’s laws require the MAP Participant to pay such employees’ or contractors’ share;

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

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

(31) Expenditures associated with a MAP Participant’s creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures.
(e) Special rules for approval of supergrades.

(1) With respect to individuals who are not U.S. citizens and who are hired by MAP Participants either as employees or contractors who are hired to act as employees, ordinarily, CCC will not reimburse any portion of such individual’s compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan applicable to the country in which the employee or contractor works. However, a MAP Participant may seek a higher level of reimbursement for a non-U.S. citizen employee or contractor who will be employed as a country director or regional director by requesting that CCC approve that employee or contractor as a supergrade.

(2) To request approval of a supergrade, the MAP Participant shall provide CCC with a detailed description of both the duties and responsibilities of the position and the qualifications and background of the employee or contractor concerned. The Participant shall also justify why the comparable FSN salary level is insufficient.

(3) Where a non-U.S. citizen employee or contractor will be employed as a country director, the MAP Participant may request approval for a “Supergrade I” salary level, equivalent to a grade increase over the existing top grade of the FSN salary plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan, with that percentage applied to each of the steps in the top grade. Where the non-U.S. citizen employee or contractor will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP Participant may request approval for a “Supergrade II” salary level, which is calculated relative to a “Supergrade I” in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(f) For a brand promotion activity, CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity.

(g) CCC will reimburse for expenditures made after the conclusion of a MAP Participant’s program year provided:

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

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

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

(h) A MAP Participant shall not use MAP funds for any activity or any expenses incurred by the MAP Participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by CCC.

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

(j) CCC may determine, at CCC’s discretion, whether any cost not expressly listed in §1485.17 will be reimbursed.

§ 1485.18 Reimbursement procedures.

(a) Participants are required to use CCC’s Internet-based UES system to request reimbursement for eligible MAP expenses. Claims for reimbursement shall contain the following information:

(1) Activity type—brand or generic;

(2) Activity number;

(3) Commodity aggregate code;

(4) Country code;

(5) Cost category;

(6) Amount to be reimbursed;

(7) If applicable, any reduction in the amount of reimbursement claimed to offset CCC demand for refund of amounts previously reimbursed and reference to the relevant compliance report or written notice; and
§ 1485.19 Advances.

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

(b) Exception. A MAP Participant for generic promotion activities may request an advance of MAP funds from CCC, provided the MAP Participant meets the criteria for advance payments set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019). CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP Participant’s program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP Participant’s approved generic activity budget for the program year. CCC will not advance funds to a MAP Participant for brand promotion activities. When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the MAP. Whether an “unacceptable risk” exists in a particular situation will depend on a number of factors, such as, for example, the Participant’s history of performance in MAP; the Participant’s perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant’s responsibility or the riskiness of its activities.

(c) Interest. A MAP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in the applicable parts of this title apply (e.g., 7 CFR Parts 3015, 3016 and 3019). Interest earned by the MAP Participant on funds advanced by CCC is not program income. The MAP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in the applicable parts of this title.

(d) Refunds due CCC. A MAP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the MAP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The MAP Participant shall make such payment
Commodity Credit Corporation, USDA § 1485.22

in U.S. dollars, unless otherwise approved in advance by CCC.
[60 FR 6363, Feb. 1, 1995, as amended at 77 FR 41885, July 17, 2012]

§ 1485.20 Employment practices.

(a) A MAP Participant shall enter into written contracts with all overseas employees who are paid in whole or in part with MAP funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A MAP Participant shall in its overseas offices conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A MAP Participant may pay salaries or fees in any currency (U.S. or foreign). Participants should consult local laws regarding currency restrictions.

§ 1485.21 Financial management.

(a) A MAP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. A MAP Participant's financial management system shall comply with the standards set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016 and 3019).

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

(c) A MAP Participant shall retain all records concerning a MAP program transaction for a period of 5 years after completion of the program transaction and permit CCC to have full and complete access, for such 5-year period, to such records. These records shall include all documents related to employment of any employees whose salaries are reimbursed in whole or in part with MAP funds, whether such employees are based in the United States or overseas, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors.

(d) A MAP Participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

1. Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);
2. Original receipts for any other program-related expenditure in excess of $75.00. CCC may, from time to time, determine a different minimum level and announce that minimum level in writing to all MAP Participants via a MAP notice issued on the FAS Web site;
3. The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;
4. Copies of reimbursement claims;
5. An itemized list of claims charged to each of the MAP Participant's CCC resources accounts;
6. Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and
7. Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; the method of computing the claimed contributions. MAP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, a MAP Participant shall provide to CCC originals of documents supporting reimbursement claims.

§ 1485.22 Reports.

(a) End-of-Year Contribution Report. Not later than 6 months after the end of its program year, a MAP Participant shall submit two copies of a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the U.S. industry, and the States during that program
§ 1485.23 Evaluation.

(a) Policy. (1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance and measurement of Federal programs, including the MAP. Evaluation of the MAP’s effectiveness will depend on a clear statement by Participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the MAP and of individual Participants’ programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant’s control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a MAP Participant’s program, contributing to program accountability, and providing evidence of program effectiveness.

(b) All MAP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market. This report shall be completed and submitted to CCC no later than 6 months following the end of the Participant’s program year.

(c) MAP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities’ export sales to determine whether the activity achieved the goals specified in the approved MAP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant’s program year.

(d) When appropriate or required by CCC, a MAP Participant shall complete a program evaluation. A program evaluation is a review of the MAP Participant’s entire program, or an appropriate portion of the program as agreed to by the MAP Participant and CCC, to determine the effectiveness of the MAP Participant’s strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the MAP Participant and CCC and specified in the approval letter. A MAP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program
Commodity Credit Corporation, USDA

§ 1485.24 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of MAP Participants’ activities under the MAP program. MAP Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide either a written compliance report or a letter to the MAP Participant. USDA staff will issue a compliance report if it appears that CCC may be entitled to recover funds from that Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 30 days of the date of the compliance report, the MAP Participant shall repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a MAP Participant notifies CCC within 30 days of the date of the compliance report that the Participant intends to file an appeal pursuant to §1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed. In the absence of any finding of funds due to CCC or other non-compliance, CCC will issue a letter to the MAP Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of MAP, CCC may require the Participant to contract for an independent audit.

(c) In addition, CCC may notify a MAP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The MAP Participant shall within 30 days of the date of the notice repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a MAP Participant notifies CCC within 30 days of the date of the written notice that the Participant intends to file an appeal pursuant to §1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

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

(e) Appeals.
§ 1485.25 Failure to make required contribution.

A MAP Participant’s required contribution will be specified in the approval letter. If the MAP Participant’s required contribution is specified as a dollar amount and the MAP Participant does not make the required contribution, the MAP Participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the MAP Participant’s required contribution is specified as a percentage of the total amount reimbursed by CCC, the MAP Participant may either return to CCC the amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A MAP Participant shall remit such payment within six months after the end of its program year. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.26 Submissions.

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

§ 1485.27 Disclosure of program information.

(a) Documents submitted to CCC by MAP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A—Official Records, and specifically 7 CFR 1.12, Handling Information from a Private Business.

(b) Any research conducted by a MAP Participant pursuant to a MAP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019).

§ 1485.28 Ethical conduct.

(a) A MAP Participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, state and local laws, and regulations. A MAP Participant shall conduct its business in the United States in accordance with applicable Federal, state and local laws and regulations. All MAP Participants must comply with the regulations in the applicable parts of this title (e.g., 7 CFR Parts 1485, 3015, 3016, 3018, 3021, 3019, and 3052).

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a MAP Participant nor its affiliates shall make export sales of U.S. agricultural commodities and products.
Commodity Credit Corporation, USDA

§ 1485.29

covered under the terms of the applicable MAP agreement. Nor shall such entities charge a fee for facilitating an export sale. A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant. For the purposes of this paragraph, “affiliate” means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(c) A MAP Participant shall not limit participation in its MAP activities to members of its organization. Participants shall ensure that their MAP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The MAP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its MAP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph does not apply to U.S. agricultural cooperatives when implementing their own brand program.

(d) A MAP Participant shall select U.S. agricultural industry representatives to participate in generic MAP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a MAP Participant shall submit such selection criteria to CCC for approval.

(e) All MAP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a Participant’s MAP agreement and the recovery of CCC funds related to such promotions from the Participant.

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

§ 1485.29 Contracting procedures.

(a) Neither CCC nor any other agency of the U.S. Government nor any official or employee of CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to MAP Participant contracts with third parties.

(b) A MAP Participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements (e.g., 7 CFR Parts 3015, 3016, and 3019). For purposes of this subpart, the “small purchase threshold” referenced in 7 CFR part 3019 is the “simplified acquisition threshold” established by 41 U.S.C. 134.

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

(d) Each MAP Participant shall submit to CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with MAP funds. CCC will notify all new and existing MAP Participants in writing in each Participant’s annual approval letter and through the FAS Web site as to applicable submission dates for and dates for approvals of contracting guidelines. CCC’s approval of such contracting guidelines will remain in place until CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by CCC, these contracting guidelines shall govern all of a Participant’s MAP-funded contracting involving contracts with an annual value of $35,000 or more. CCC may determine a different minimum value and announce that minimum value in writing to all MAP Participants via a MAP notice issued on the FAS Web site. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring
and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The MAP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 306, 3019), these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the MAP Participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee’s, officer’s, board member’s, agent’s family, partners, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals’ families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. MAP Participants’ written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

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

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the MAP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the MAP Participant.

(e) A MAP Participant may undertake MAP promotional activities directly or through a domestic or foreign third party. However, the MAP Participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such third party
and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC in relation to such third-party’s promotional activities and expenditures.

§ 1485.30 Property standards.

The MAP Participant shall insure all MAP-funded real property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

§ 1485.31 Anti-fraud requirements.

(a) All MAP Participants.

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

(2) The MAP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant’s MAP program agreement and/or approval letter. The MAP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by CCC or USDA to the MAP Participant for the prompt investigation of such allegation or occurrence.

(b) MAP Participants with brand programs.

(1) The MAP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The MAP Participant shall repay to CCC funds paid to a brand participant through the MAP Participant on claims that the MAP Participant or CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the MAP Participant’s determination or CCC’s disallowance. The MAP Participant shall repay CCC by submitting a check to CCC or by offsetting the MAP Participant’s next reimbursement claim. The MAP Participant shall repay CCC in U.S. dollars, unless otherwise approved in advance by CCC. A MAP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for MAP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless CCC determines that the MAP Participant was grossly negligent in the operation of the brand program regarding such claims. CCC shall communicate any such determination to the MAP Participant in writing.

§ 1485.32 Program income.

Any revenue or refunds generated from an activity, e.g., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with MAP funds, shall be used by the MAP Participant in furtherance of its approved MAP activities in the program period during which the MAP funds are available for obligation by the MAP Participant. The use of such revenue or refunds shall be governed by 7 CFR Part 1485. Interest earned on funds advanced by CCC is not program income.

§ 1485.33 Amendment.

A program agreement may be amended in writing with the consent of CCC and the MAP Participant.
§ 1485.34 Noncompliance with an agreement.

If a MAP Participant fails to comply with any term in its program agreement or approval letter, CCC may take one or more of the enforcement actions set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019) and, if appropriate, initiate a claim against the MAP Participant, following the procedures set forth in this subpart. CCC may also initiate a claim against a MAP Participant if program income or CCC-provided funds are lost due to an action or omission of the MAP Participant.

§ 1485.35 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, 3019). If an agreement is terminated, the applicable parts of this title will apply to the closeout of the agreement (e.g., 7 CFR Parts 3015, 3016, 3019).

§ 1485.36 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this subpart have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0026 for this information collection.

PART 1486—EMERGING MARKETS PROGRAM

Subpart A—General Information

Sec.
1486.100 What is the Emerging Markets Program?
1486.101 What special definitions apply to this program?
1486.102 Is there a list of eligible emerging market countries?
1486.103 Are regional projects possible under the program?

Subpart B—Eligibility, Applications, and Funding

1486.200 What entities are eligible to participate in the program?
1486.201 Under what conditions may research and consultant organizations, individuals, or any other for-profit entity apply to the program?
1486.202 Are there any ineligible entities?
1486.203 Which commodities/products are eligible for consideration under the program?
1486.204 Are multi-year proposals eligible for funding?
1486.205 What types of funding are available under the program?
1486.206 What is the Quick Response Marketing Fund?
1486.207 What is the Technical Issues Resolution Fund?
1486.208 How does an entity apply to the program?
1486.209 How are program applications evaluated and approved?
1486.210 Are there any limits on the funding of proposals?

Subpart C—Program Operations

1486.300 How are applicants notified of decisions on their applications?
1486.301 How is the working relationship established between CCC and the Recipient of program funding?
1486.302 Can changes be made to a project once it has been approved?
1486.303 What specific contracting procedures must be adhered to?

Subpart D—Contributions and Reimbursements

1486.400 What are the rules on cost sharing?
1486.401 What cost share contributions are eligible?
1486.402 What are ineligible contributions?
1486.403 What expenditures may CCC reimburse under the program?
1486.404 What expenditures are not eligible for program funding?
1486.405 How are Recipients reimbursed for project expenditures?
1486.406 Will CCC make advance payments to Recipients?

Subpart E—Reporting, Evaluation, and Compliance

1486.500 What are the reporting requirements of the program?
1486.501 What is the rule on notifying field offices of international travel?
1486.502 How is project effectiveness measured?
1486.503 How is program compliance monitored?
1486.504 How does a Recipient respond to a compliance report?
1486.505 Can a Recipient appeal the determinations of the Director, CRS?
1486.506 When will a project be reviewed?
1486.507 What is the effect of failing to make required contributions?
Subpart A—General Information

§ 1486.100 What is the Emerging Markets Program?

(a) The principal purpose of the EMP is to assist U.S. entities in developing, maintaining, or expanding the exports of U.S. agricultural commodities and products by providing partial funding for technical assistance activities that promote U.S. agricultural exports to emerging markets, consistent with U.S. foreign policy interests. The Program is intended primarily to support export market development efforts of the private sector, but the Program’s resources may also be used to assist public agricultural organizations as well. Technical assistance may include activities such as feasibility studies, market research, sector assessments, orientation visits, specialized training, business workshops, and similar undertakings.

(b) The EMP may be used to support exports of U.S. agricultural commodities and products only through generic activities.

(c) Only initiatives that support the export of U.S. agricultural commodities and products are eligible for assistance from the program. The program’s resources may not be used to support the export of another country’s products to the United States, or to promote the development of a foreign economy as a primary objective.

(d) The program is administered by personnel of USDA’s Foreign Agricultural Service.

§ 1486.101 What special definitions apply to this program?

For purposes of this subpart, the following definitions apply:

Activities—components of a project which, when implemented collectively, are intended to achieve a specific market development objective.

Administrator—the Administrator of FAS, or designee.

Advisory Committee—a group of representatives from the private sector appointed by the Secretary of Agriculture whose primary mission is to review proposals requesting funding under the EMP and make recommendations on projects and programs that can enhance exports through the use of program funds.

Agreement—a written assistance agreement under this part.

Agricultural Commodity—an agricultural commodity, food, feed, fiber, wood, livestock, or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

Attache/Counselor—the Foreign Agricultural Service employee representing United States Department of Agriculture interests in the foreign country in which promotional activities are conducted.

CCC—Commodity Credit Corporation.

Compliance Review Staff—the office within the Foreign Agricultural Service responsible for performing reviews of Recipients to ensure compliance under this part.

Constraint—a condition in a particular country or region which inhibits the development, expansion, or maintenance of exports of a specific U.S. agricultural commodity or product.

Cost Share/Contribution—the amount of funding (cash and in-kind) U.S. entities are willing to commit from their own resources in support of an approved project.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, or designee.

§ 1486.508 How long must Recipients maintain original project records?

§ 1486.509 Are Recipients allowed to charge fees for specific activities in approved projects?

§ 1486.510 What is the policy regarding disclosure of program information?

§ 1486.511 What is the general policy regarding ethical conduct?

§ 1486.512 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?
Emerging Market—any country or regional grouping that is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; has the potential to provide a viable and significant market for United States agricultural commodities or products; a population greater than 1 million; and a per capita income level below the level for upper middle-income countries as determined by the World Bank.

EMP—Emerging Markets Program.
FAS—Foreign Agricultural Service.
Generic Promotion—an activity that does not involve or promote the exclusive or predominant use of an individual company name or logo or brand name.
Project—an approach or undertaking made up of one or more activities which, taken together, are intended to achieve a specific market development objective.
Project Funds—the funds made available to a Recipient by the Commodity Credit Corporation under an agreement, and authorized for expenditure in accordance with this part.
Proposal—an application for funding.
Recipient—a U.S. entity receiving financial assistance directly from the Commodity Credit Corporation or Foreign Agricultural Service to carry out a project.
SRTG—State Regional Trade Group.
STRE—sales and trade relations expenses including meals, receptions, refreshments, checkroom fees, tips, and dining decorations.
UES—Unified Export Strategy.
USDA—United States Department of Agriculture.

§ 1486.102 Is there a list of eligible emerging market countries?

The World Bank periodically redefines the income limits on upper middle-income economies. Consequently, an absolute list of “emerging market” countries has not been established. However, CCC will provide general guidance on country eligibility in each program announcement.

§ 1486.103 Are regional projects possible under the program?

Projects that focus on regions, such as the Caribbean Basin, rather than individual countries, are eligible for consideration provided such projects target qualifying emerging markets in the specified region. CCC may consider activities which target qualified emerging markets in a specific region, but are conducted in a non-emerging market because of its importance as a central location and ease of access to that region.

Subpart B—Eligibility, Applications, and Funding

§ 1486.200 What entities are eligible to participate in the program?

To participate in the EMP, U.S. private or government entities must demonstrate a role or interest in the exports of U.S. agricultural commodities or products. Government organizations consist of federal, state, and local agencies. Private entities include nonprofit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities and consulting businesses.

§ 1486.201 Under what conditions may research and consultant organizations, individuals, or any other for-profit entity apply to the program?

(a) Proposals from research and consulting entities will be considered for funding assistance only with evidence of substantial participation in and financial support by U.S. industry to a proposed project. Such support must credibly be provided in the form of actual monetary contributions to the cost of a project.
(b) For-profit entities shall not use program funds to conduct private business or to promote private self-interests. For-profit entities may not use program funds to supplement the costs of normal day-to-day operations or to promote their own products or services beyond specific uses approved in a given project.

§ 1486.202 Are there any ineligible entities?

Foreign organizations, whether government or private, may participate as
third parties in activities carried out by U.S. entities, but are not eligible for funding assistance from the program.

§ 1486.203 Which commodities/products are eligible for consideration under the program?
All U.S. agricultural commodities/products except tobacco are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Projects which seek support for multiple commodities are also eligible.

§ 1486.204 Are multi-year proposals eligible for funding?
Proposals for projects exceeding 1 year in duration may be considered. If approved, funding for multi-year projects is normally provided 1 year at a time, with commitments beyond the first year subject to interim evaluations intended to assess the progress of the project toward meeting its intended objectives.

§ 1486.205 What types of funding are available under the program?
CCC has established three pools of funding within the EMP—the Central Fund, the Quick Response Marketing Fund, and the Technical Issues Resolution Fund. Each year CCC will inform the public of the process by which interested eligible entities may submit proposals for funding under the Central Fund. Because of the time sensitive nature of issues intended to be addressed, the Quick Response Marketing Fund and the Technical Issues Resolution Fund will be available continuously with no application deadline.

§ 1486.206 What is the Quick Response Marketing Fund?
(a) This fund was established to address priority constraints to market access that arise because of unforeseen events; market conditions in emerging markets are often less predictable than in more developed countries. It allows responsiveness to time-sensitive marketing problems or opportunities, such as a change in an import regime or the removal of a trade embargo; an unexpected or unusual change in the political or financial situation in a country; or a significant change in crop conditions—any of which may have an immediate impact on the access of particular commodities or products to specific markets.

(b) Proposals for the Quick Response Marketing Fund must identify specific market access issues that also face time constraints. Application content, evaluation, and reporting requirements are the same as for the Central Fund.

§ 1486.207 What is the Technical Issues Resolution Fund?
(a) This fund was established to address technical barriers to trade in emerging markets worldwide by providing technical assistance, training, and exchange of expertise. These include plant quarantine, animal health, food safety, and other technical barriers to U.S. exports based on unsound or incomplete scientific information.

(b) Funding priorities are principally those issues that are time sensitive and are strategic areas of longer term interest. Funding decisions are determined primarily through a review process that includes FAS and relevant regulatory agencies. The review is based upon the following criteria:
(1) The activity occurs in an eligible country or region of market priority;
(2) The trade constraint warrants intervention;
(3) The proposed activity is likely to achieve an impact in the short- or long-term;
(4) The Recipient is qualified to undertake the proposed activity;
(5) The budget requested is reasonable and includes leveraged resources;
(6) If applicable, a U.S. domestic constraint or trade issue can be resolved in support of a proposed activity; and
(7) The activity has support from USDA field offices.

(c) Because of the time sensitive nature of the issues intended to be addressed by these funds, proposals, whether private or government, may be submitted at any time during the year. Reviews of proposals are scheduled on a monthly basis. An expedited review may be requested but must be justified.

(d) Application content, evaluation, and reporting requirements are the same as for the Central Fund.
§ 1486.208 How does an entity apply to the program?

CCC will periodically announce that it is accepting proposals for participation in the EMP. All relevant information, including application deadlines (for the Central Fund) and proposal content, will be noted in the announcement. Proposals must be submitted in accordance with the terms and requirements specified in the announcement. CCC may request any additional information it deems necessary from any applicant in order to evaluate properly any proposal.

§ 1486.209 How are program applications evaluated and approved?

(a) General. Proposals received by the application deadline stated in the announcement for the Central Fund undergo a multi-phase review by FAS staff and the EMP Advisory Committee to determine qualifications, quality and appropriateness of projects, and reasonableness of project budgets.

(b) Evaluation criteria. FAS will consider a number of factors when reviewing proposals, including:

(1) The ability of the entity to provide an experienced U.S.-based staff with knowledge and expertise to ensure adequate development, supervision, and execution of the proposed project;

(2) The entity’s willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable.

(c) Approval decision. CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraph (b) of this section. All decisions regarding the disposition of an application are final.

§ 1486.210 Are there any limits on the funding of proposals?

(a) The EMP is a relatively small program intended primarily to promote access to qualified emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;

(ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

(iii) Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems which affect more than one industry, e.g., grain storage handling and inventory systems development;

(iv) Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers;

(v) Assessments and follow-up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, or to determine the potential use for general export credit guarantees;

(vi) Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries; and

(vii) Short-term training in agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system.

(2) The entity’s willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable.

(7) The following priority technical assistance activities:

(i) Projects and activities which use technical assistance designed specifically to improve market access in

(2) The entity’s willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable.

(7) The following priority technical assistance activities:

(i) Projects and activities which use technical assistance designed specifically to improve market access in emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;

(ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

(iii) Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems which affect more than one industry, e.g., grain storage handling and inventory systems development;

(iv) Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers;

(v) Assessments and follow-up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, or to determine the potential use for general export credit guarantees;

(vi) Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries; and

(vii) Short-term training in agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system.

(2) The entity’s willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable.

(7) The following priority technical assistance activities:

(i) Projects and activities which use technical assistance designed specifically to improve market access in emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;

(ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

(iii) Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems which affect more than one industry, e.g., grain storage handling and inventory systems development;

(iv) Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers;

(v) Assessments and follow-up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, or to determine the potential use for general export credit guarantees;

(vi) Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries; and

(vii) Short-term training in agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system.

(2) The entity’s willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only);

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product;

(4) The degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets;

(5) Demonstration of how a proposed project will benefit a particular industry as a whole; and

(6) Past program results and evaluations, if applicable.

(7) The following priority technical assistance activities:

(i) Projects and activities which use technical assistance designed specifically to improve market access in emerging markets such as activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share;

(ii) Marketing and distribution of value-added products, including new products or new uses. Examples include food service development, market research on potential for consumer-ready foods or new uses of a product, and export feasibility studies.

(iii) Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems which affect more than one industry, e.g., grain storage handling and inventory systems development;

(iv) Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers;

(v) Assessments and follow-up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, or to determine the potential use for general export credit guarantees;

(vi) Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries; and

(vii) Short-term training in agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system.
Commodity Credit Corporation, USDA

§1486.303 What specific contracting procedures must be adhered to?

(a) The Recipient has full and sole responsibility for the legal sufficiency of all contracts it may enter into with one or more third parties in order to carry out an approved project and shall assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Recipient. Neither CCC nor any other agency of the United States Government or any official or employee of CCC or the United States Government has any obligation or responsibility with respect to Recipient contracts with third parties.

(b) Recipients are responsible for ensuring to the extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for professional and consulting services paid to third parties in any part with project funds must be covered by written contracts.

(d) A Recipient shall:
§ 1486.400

(1) Ensure that all expenditures for goods and services in excess of $25 reimbursed by CCC are documented by a purchase order, invoice, or contract;

(2) Ensure that no employee or officer participates in the selection or award of a contract in which such employee or officer, or the employee’s or officer’s family or partners has a financial interest or gains a financial benefit;

(3) Conduct all contracting in an open manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services shall be excluded from competition for such procurement;

(4) Base each solicitation for professional or consulting services on a clear and accurate description of the requirements for the services to be procured;

(5) Perform some form of fee, price, or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered fees or prices; and

(6) Document the decision-making process.

Subpart D—Contributions and Reimbursements

§ 1486.401 What cost share contributions are eligible?

(a) Eligible contributions are those expenses that:

(1) Have not been or will not be reimbursed by any other source outside of the Recipient or other participating U.S. entity;

(2) Are incurred during the period covered by the project agreement;

(3) Are directly related to activities necessary to implement an approved project; and

(4) Are not proscribed under § 1486.402.

(b) Contributions must be included in a project’s line item budget.

§ 1486.402 What are ineligible contributions?

(a) The following are not eligible as contributions:

(1) Normal operating expenses and other costs not directly related to the project;

(2) Any portion of salary or compensation of an individual who is the focus of a promotional activity;

(3) Depreciation, e.g., office equipment;

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

(5) The cost of product development or product modifications;

(6) Slotting fees or similar sales expenditures;
(7) Funds, services, capital goods, or personnel provided by any U.S. government agency;

(8) Capital investments made by a third party, such as permanent structures, real estate, and the purchase of office equipment and furniture;

(9) The value of any services generated by a third party which involve no expenditure by the Recipient or third party, e.g., free publicity;

(10) The cost of developing any application/proposal for EMP funding;

(11) Costs included as contributions for any other federally-assisted project or program;

(12) Membership fees in clubs and social or professional organizations; and

(13) Any expenditure made prior to approval of an EMP-funded project.

(b) The Deputy Administrator shall determine, at his or her discretion, whether any cost not expressly listed in this section may be included as an eligible contribution.

§ 1486.403 What expenditures may CCC reimburse under the program?

(a) A Recipient may seek reimbursement for an expenditure if:

(1) The expenditure is reasonable and is specified in the project budget in furtherance of an approved activity; and

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

(b) Subject to paragraph (a) of this section, CCC will reimburse, in whole or in part, the cost of:

(1) Salaries and benefits of the Recipient’s existing personnel or any other participating entity that are assigned to EMP-funded projects; however, reimbursement is limited to:

(i) The actual daily rate paid by the Recipient for the employee’s salary or the daily rate of a General Schedule U.S. Government employee, GS–15/Step 10 in effect during the calendar year in which the project or activity is approved for funding, whichever is less;

(ii) The actual assigned time of the employee to the project; and

(iii) Benefits at a maximum rate of 30 percent of the existing salary of the employee, prorated to the time assigned to the project. In addition, reimbursement for an employee’s time spent on an EMP-funded project must be in lieu of compensation from the Recipient or any other participating entity.

(2) Consulting fees for professional services; however, reimbursement for consulting fees is limited to the daily rate of a General Schedule U.S. Government employee, GS–15/Step 10 in effect during the calendar year in which the project or activity is approved for funding. Reimbursement is authorized only for actual days worked and is not authorized for travel and rest days. Benefits are not reimbursable.

(3) STRE, including breakfast, lunch, dinner, and refreshments when part of an approved overseas trade activity; miscellaneous courtesies such as checkroom fees, taxi fares, and tips; and representation expenses such as the costs of social events or receptions that are primarily attended by foreign officials, and which are held at foreign venues. Such expenses must conform to the American Embassy representational funding guidelines as the standard for judging the appropriateness of STRE event costs. STRE incurred in the United States is not authorized for reimbursement, but may be counted as a cost-share contribution to the project.

(4) Travel expenses, subject to the following:

(i) Air travel, limited to the full-fare economy class rate and must comply with the Fly America Act, 49 U.S.C. App. 1517. The CCC will not reimburse any portion of air travel in excess of the full fare economy rate or when the participant fails to notify the Counselor/Attache in the destination country in advance of the travel unless the Deputy Administrator determines it was impractical to provide such notification.

(ii) Per diem, limited to the allowable rate for each domestic or foreign locale (41 CFR Chapter 301). Expenses in excess of the authorized per diem rates may be allowed in special or unusual circumstances (41 CFR Chapter 301, subpart D), and must be approved in advance.

(iii) All other expenses while in travel status must conform to U.S. Federal Travel Regulations (41 CFR Chapters 301 and 304).

(5) Direct administrative costs.
§ 1486.404 What expenditures are not eligible for program funding?

(a) CCC will not reimburse expenditures made prior to approval of a Recipient’s proposal, unreasonable expenditures, or any cost of:

(1) Branded product promotions—in-store, restaurant advertising, labeling, etc.;

(2) Administrative and operational expenses for trade shows;

(3) Advertising;

(4) Preparation and printing of magazines, brochures, flyers, posters, etc., except in connection with specific approved activities such as training;

(5) Design, development, and maintenance of Internet Web sites;

(6) Purchase and depreciation of equipment, e.g., office equipment or other fixed assets;

(7) Subsidizing or otherwise providing funds for graduate programs at colleges and/or universities (salaries or fees for individual students who are directly assigned to specific project activities appropriate to their backgrounds may be covered on a pro-rated basis);

(8) Subsidizing normal, day-to-day operating costs of an entity; exception: indirect costs incurred during implementation of an approved project;

(9) Honoraria for speakers;

(10) Costs of product research or new product development;

(11) Costs of developing technical assistance proposals submitted to the program;

(12) Refundable deposits or advances;

(13) STRE expenses within the United States;

(14) All costs related to the shipping, over land and sea, of commodity samples;

(15) Expenses, fees, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from contractual terms, conditions, provisions, and related formalities;

(16) Legal fees, including fees and costs associated with trade disputes;

(17) Real estate costs other than allowable costs for office space whose use is assigned specifically to a project funded by the EMP; and

(18) Any expenditure that has been or will be reimbursed by any other source.

(b) The Deputy Administrator may determine whether any cost not expressly listed in this section will be reimbursed.

§ 1486.405 How are Recipients reimbursed for project expenditures?

(a) After implementation of an EMP project for which CCC has agreed to provide funding, Recipients may submit claims for reimbursement of the expenses incurred to the extent CCC has agreed to pay for such costs. Reimbursement for approved project expenses is limited to 85 percent of the amount specified in the project agreement. The Recipient may be reimbursed for the remaining 15 percent of the funds after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(b) A format for reimbursement claims is available from the Marketing Operations Staff, FAS, USDA.

(c) Final reimbursement claims must be made no later than 90 days after the completion date of the project, and are
subject to a complete final performance report acceptable to FAS.

(d) Any duplicate payment or overpayment made by CCC shall be returned by the Recipient promptly after discovery of the overpayment by the Recipient or within 30 days after notification by FAS, either by submitting a check made payable to the Commodity Credit Corporation and referencing the applicable project, or by offsetting as a credit on the next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

§ 1486.406 Will CCC make advance payments to Recipients?

(a) Policy. In general, CCC operates the EMP on a cost reimbursable basis.

(b) Exception. Upon request, CCC may make advance payments to a Recipient against an approved project budget. Up to 40 percent of the approved project budget may be provided as an advance, either at one time or in incremental payments. Advances should be limited to the minimum amounts needed and requested as close as is administratively feasible to the actual time of disbursement by the Recipient. Reimbursement claims will be used to offset advances. Recipients shall deposit and maintain advances in insured, interest-bearing accounts.

(c) Refunds due CCC. A Recipient shall expend all advances within 90 calendar days after the date of disbursement by CCC. A Recipient shall return all interest earned by advances plus any unexpended portion of the advance within 90 calendar days after the date of disbursement by CCC by submitting a check payable to CCC. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1486.500 What are the reporting requirements of the program?

(a) Performance Reports. (1) Recipients are required to submit regular progress reports in accordance with the project agreement. Quarterly progress reports are required for all projects with a duration of 1 year or longer. Projects of less than 1 year in duration generally require a mid-term report.

(2) Final performance reports must be submitted no later than 90 days after completion of the project, both electronically (preferably in PDF format) and in hard copy.

(3) Reporting requirements and formats for both quarterly progress reports and final performance reports are specified in the project agreement between CCC and the Recipient entity.

(4) All final performance reports will be made available to the public.

(b) Financial Reports. Final financial reports must be submitted no later than 90 days after completion of the project. Such reports must provide a final accounting of all project expenditures by cost category, and include the accounting of actual contributions made to the project by the Recipient and all other participating entity or entities.

§ 1486.501 What is the rule on notifying field offices of international travel?

The Recipient must advise the Agricultural Counselor(s) or Attache(s) in the country or countries of any planned visits by the Recipient or its consultants or other participants to such country or countries under terms of its agreement. Failure to notify the Counselor/Attache may result in disallowance of the travel expenditures.

§ 1486.502 How is project effectiveness measured?

Project evaluations may be carried out by FAS at its option with or without Recipients. FAS may also seek outside expertise to conduct or participate in evaluations.

§ 1486.503 How is program compliance monitored?

(a) The CRS, FAS, performs periodic on-site reviews of Recipients to ensure compliance with this part, applicable federal regulations, and the terms of the project agreements. Program funds spent inappropriately or on unapproved activities must be returned to CCC. The CRS will review contributions from Recipients for compliance with project budgets as approved and specified in the agreements.
§ 1486.504 How does a Recipient respond to a compliance report?

(a) A Recipient shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. The Director, CRS, at his or her discretion, may extend the period for response up to an additional 30 days. The response shall include:

(1) Repayment of any funds determined to be due to CCC;

(2) Submission of documentation or evidence of any other required action; or

(3) A request for reconsideration of any finding and the supporting justification.

(b) If after review of the compliance report and response, the Director, CRS determines that the Recipient owes money to CCC, the Director, CRS, will so inform the Recipient and provide a detailed basis for the decision. The Recipient has 30 days from the date of the Director’s, CRS, determination to submit any money owed to CCC or to request reconsideration.

(c) If the Recipient does not respond to the compliance report within the required time period, the Director, CRS, may initiate action to collect any amount owed to CCC pursuant to 7 CFR Part 1403, Debt Settlement Policies.

§ 1486.506 When will a project be reviewed?

Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

§ 1486.507 What is the effect of failing to make required contributions?

A Recipient’s contribution requirement is specified in the project agreement. If a Recipient fails to contribute the total specified in the agreement, the difference between the amount contributed and the total must be repaid to the CCC in U.S. dollars. If a Recipient is reimbursed by CCC for less than the amount of funds approved in the agreement, then the final cost share shall equal, on a percentage basis, the original ratio of private contributions to the authorized EMP funding level.

§ 1486.505 Can a Recipient appeal the determinations of the Director, CRS?

(a) A Recipient may appeal the determinations of the Director, CRS, to the Deputy Administrator, CMP. The request must be in writing and be submitted to the Office of the Deputy Administrator, CMP, within 30 days following the date of the original determination. The Recipient may request a hearing.

(b) If the Recipient submits its appeal and requests a hearing, the Deputy Administrator, or the Deputy Administrator’s designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Recipient bears the cost of the transcript; however, the Deputy Administrator or designee may have a transcript prepared at FAS’s expense.

(c) The Deputy Administrator or the Deputy Administrator’s designee will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Deputy Administrator will be the final determination of FAS. The Recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Deputy Administrator.

§ 1486.508 How long must Recipients maintain original project records?

Each Recipient shall maintain all original records and documents relating to the project for 3 calendar years following the end of the project’s completion. All documents and records related to the project, including records pertaining to contractors, shall be made available upon request.
§ 1486.509 Are Recipients allowed to charge fees for specific activities in approved projects?

Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. Income or refunds generated from an activity, however, for which the expenditures have been wholly or partially reimbursed, shall be repaid by submitting a check payable to CCC or offsetting the Recipient’s reimbursement claim. Any activity fees charged must be used to offset activity expenses. Such fees may not be used as profit or counted as cost-share. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used.

§ 1486.510 What is the policy regarding disclosure of program information?


(b) Progress reports, final performance reports, and the results of any research or other activity conducted by a Recipient under an agreement, shall be the property of the U.S. Government.

§ 1486.511 What is the general policy regarding ethical conduct?

(a) The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent and any member of his or her immediate family, his or her partner, or an entity which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, Recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

(b) A Recipient shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out.

§ 1486.512 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for review and under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). OMB has assigned control number 0551–0043 for this information collection.

PART 1487—TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

Sec. 1487.1 What special definitions apply to the TASC program?

1487.2 What is the TASC program?

1487.3 What activities are eligible?

1487.4 Are there any limits on the scope of proposals?

1487.5 What is the process for submitting proposals?

1487.6 What are the criteria for evaluating proposals?

1487.7 How are agreements formalized?

1487.8 How are payments made?


SOURCE: 67 FR 57327, Sept. 10, 2002, unless otherwise noted.

§ 1487.1 What special definitions apply to the TASC program?

For purposes of this part, the following definitions apply:

CCC—Commodity Credit Corporation.

Eligible Organization—Any U.S. organization, including, but not limited to, U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.
§ 1487.2 What is the TASC program?

Under the TASC program, CCC, an agency and instrumentality of the United States within the Department of Agriculture, provides funds to eligible organizations, on a grant basis, to implement activities that are intended to address a sanitary, phytosanitary, or technical barrier that prohibit or threaten the export of U.S. specialty crops that are currently available on a commercial basis. The TASC program is intended to benefit the represented industry rather than a specific company or brand. This program is administered by FAS.

§ 1487.3 What activities are eligible?

(a) General. In order to be eligible for funding under the TASC program, activities must address sanitary, phytosanitary, or technical barriers to export of specialty crops. Examples of expenses that CCC may agree to cover under the TASC program include, but are not limited to: initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

(b) Location of activities. Eligible projects may take place in the United States or abroad.

§ 1487.4 Are there any limits on the scope of proposals?

(a) Funding cap. Proposals which request more than $500,000 of CCC funding in a given year will not be considered.

(b) Length of activities. Funding will not be provided for projects that have received TASC funding for 5 years. The 5 years do not need to be consecutive.

(c) Target countries. Proposals may target all eligible export markets, including single countries or reasonable regional groupings of countries.

(d) Multiple proposals. Applicants may submit multiple proposals, but no participant may have more than five approved projects underway at any given time.

§ 1487.5 What is the process for submitting proposals?

(a) General. Periodically the CCC will inform the public of the process by which interested eligible organizations may submit proposals for TASC program funding. This announcement will, among other things, include information on any deadlines for submitting proposals and the address of the office to which the proposals should be sent. The CCC also may announce the availability of a Quick Response Fund within the TASC program. Proposals submitted under any form of quick response process may be submitted at any time during the year but must meet the basic requirements of the program and any specific requirements of that particular process. Organizations interested in participating in the TASC program may submit their proposals electronically or in paper copy. Although no specific format is required, a sample format for proposals is available from the address provided in this rule.

(b) Contents of proposals. TASC proposals must contain complete information about the proposed projects, including, at a minimum, the following:

(1) Organizational information, including:
   (i) Organization’s name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
   (ii) Type of organization;
   (iii) Name, telephone number, fax number, and e-mail address of the primary contact person;

926
§ 1487.6 What are the criteria for evaluating proposals?

(a) Evaluation criteria. FAS will use the following criteria in evaluating proposals:

(1) The nature of the specific export barrier and the extent to which the proposal is likely to successfully remove, resolve, or mitigate that barrier;

(2) The potential trade impact of the proposed project on market retention, market access, and market expansion, including the potential for expanding commercial sales in the targeted market;

(3) The completeness and viability of the proposal;

(4) The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;

(5) The extent to which the proposal is targeted to a market in which the United States is generally competitive;

(6) The cost of the project and the amount of other resources dedicated to the project, including cash and goods and services of the U.S. industry and foreign third parties;

(7) The degree to which time is essential to addressing specific export barriers;

(8) In cases where the CCC receives multiple proposals from different applicants which address essentially the same barrier, the nature of the applicant organization will be taken into consideration, with a greater weight given to those organizations with the broadest base of producer representation.

(b) Evaluation process. FAS will review all proposals for eligibility and completeness and will evaluate each proposal against the factors described in paragraph (a) of this section. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials within FAS for decision. FAS may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. government experts in evaluating the merits of a proposal.
§ 1487.7 How are agreements formalized?

Following the approval of a proposal, the CCC will enter into a written agreement with the organization that submitted the proposal. This program agreement will incorporate the proposal as approved by the FAS, include a maximum dollar amount that may be reimbursed (the funding level), and identify terms and conditions under which the CCC will reimburse certain costs of the project. Program agreements also will outline any specific responsibilities of the participant, including, but not limited to, the timely and effective implementation of program activities and the submission of a written report(s), on no less than an annual basis, which evaluates the TASC project using the performance measures presented in the approved proposal.

[68 FR 42564, July 18, 2003]

§ 1487.8 How are payments made?

(a) Reimbursement. (1) Following the implementation of a project for which the CCC has agreed to provide funding, a participant may submit claims for reimbursement of eligible expenses to the extent that the CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by the FAS before any reimbursable expenses associated with the change can be incurred. A participant will be reimbursed after the CCC reviews the claim and determines that it is complete.

(2) All claims for reimbursement must be received no later than 90 calendar days following the expiration or termination date of the program agreement. For program agreements which extend beyond twelve months, all claims for reimbursement must be received no later than 90 calendar days following the next anniversary of the effective date of the agreement.

(3) Participants shall maintain complete records of all program expenditures, identified by TASC agreement number, program year, country or region, activity number and cost category. Such records shall be accompanied by original documentation which supports the expenditure and shall be made available to the FAS upon request.

(4) Participants shall maintain all records and documents relating to TASC projects, including the original documentation which supports reimbursement claims, for a period of 3 calendar years following the expiration or termination date of the program agreement. Such records and documents will be subject to verification by FAS and shall be made available upon request to authorized officials of the U.S. Government. FAS may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(5) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the participant shall return the overpayment amount or the disallowed amount to the CCC within 30 days after realizing the overpayment or receiving notification of the overpayment or disallowed amount.

(b) Advances. Participants may request advances of funds, not to exceed 85 percent of the funding approved in any given program year. All advanced funds must be either fully expended or the balance returned by check made payable to the CCC no later than the 90th calendar day following the date of disbursement of the advance to the participant. Upon the expenditure of advance funds, participants must submit reimbursement claims to offset the advance charged to them.

(c) Interest. Participants shall deposit and maintain advanced funds in insured, interest-bearing accounts. Interest earned on outstanding advances must be returned by check made payable to the CCC at the time the advance is either fully expended or itself returned.

[68 FR 42564, July 18, 2003, as amended at 74 FR 22090, May 12, 2009]

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL
Commodity Credit Corporation, USDA § 1488.2

1488.1 General statement.
1488.2 Definition of terms.

FINANCING EXPORT SALES
1488.3 General.
1488.4 Submission of requests for sale registrations.
1488.5 Acceptance of sale registrations.
1488.6 Amendments to financing agreement.
1488.7 Expiration of period(s) for delivery and/or export.

DOCUMENTS REQUIRED FOR FINANCING
1488.8 Documents required after delivery.
1488.9 Evidence of export.
1488.9a Evidence of export for commodities delivered before export.

DOCUMENTS REQUIRED AFTER FINANCING
1488.10 Evidence of entry into country of destination.

DELIVERY REQUIREMENTS
1488.11 Liquidated damages.

BANK OBLIGATIONS AND REPAYMENT
1488.12 Coverage of bank obligations.
1488.13 CCC drafts.
1488.14 Interest charges.
1488.15 Advance payment.
1488.16 Liability for payment.

MISCELLANEOUS PROVISIONS
1488.17 Assignment.
1488.18 Covenant against contingent fees.
1488.19 [Reserved]
1488.20 Official not to benefit.
1488.21 Exporter’s records and accounts.
1488.22 Communications.
1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL § 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM–5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this subpart A, CCC will purchase for cash, after delivery, the exporter’s account receivable arising from the export sale.

(c) The provisions of Pub. L. 83–664 are not applicable to shipments under this program.

(d) The regulations contained in this subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) Account receivable means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with §1488.14, and (3) acceleration of payment thereunder in accordance with these regulations.

(b) Agency or branch bank means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) Assistant Sales Manager means the Assistant Sales Manager, Commercial
§ 1488.2

Export Programs, Office of the General Sales Manager.

(d) Bank obligation means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with §1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or any agency or branch bank in accordance with §1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever occurs first, if payment is not received from other sources.

(e) CCC means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) Carrying charges means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidental costs as may be approved by the Assistant Sales Manager.

(g) Commercial risk means risk of loss due to any cause other than specified as noncommercial risk in paragraph (u) of this section.

(h) Date of delivery means the on-board date of the ocean bill of lading, or the date of an airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the on-board carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) Date of sale means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) Delivery means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) Eligible commodities means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC’s Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with §1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) Eligible cotton means Upland and Extra Long staple cotton grown in the United States: Provided, however, That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC’s determination as to the eligibility of cotton shall be final.
(m) Eligible destination means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) Eligible exporter or exporter means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) OGSM means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) Financing agreement means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) Financing period means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) Foreign bank means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) Foreign importer or importer means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) GSM–5 means the regulations contained in this subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) Noncommercial risk means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) Port value means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) Sale means a contract to sell on credit U.S. agricultural commodities to be financed under GSM–5.

(x) United States means the 50 States, the District of Columbia, and Puerto Rico.
§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:
(a) Permit U.S. exporters to meet competition from other countries.
(b) Prevent a decline in U.S. commercial export sales.
(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.
(d) Result in a new use of the agricultural commodity in the importing country.
(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in §1488.22.
(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.
(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.
(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM–5. The following information shall also be included in the exporter’s request for a sale registration:
(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.
(2) The country of destination.
(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.
(4) The date of sale and exporter’s sale number.
(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.
(6) The financing period.
(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in §1488.12b), and the percentage of confirmation.
(8) The name and address of the foreign importer.
(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.
(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM–5 financing agreement.
(11) Any additional information as determined by CCC.

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart,
the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter’s request for a sale registration, CCC’s acceptance of the sale registration, the applicable terms and conditions of this subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM–5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

§ 1488.6 Amendments to financing agreement.
The financing agreement may be amended provided such amendment is in conformity with GSM–5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.
(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with §1488.11.

DOCUMENTS REQUIRED FOR FINANCING

§ 1488.8 Documents required after delivery.

(a) CCC will purchase an exporter’s account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a “Combined Application for Disbursement, Assignment of Account Receivable and Certification” which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter’s certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the
§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as

(b) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter’s sales invoice to the intervening purchaser and of the intervening purchaser’s sales invoice to the foreign importer.

(c) A copy of the document evidencing export provided for in §1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(d) A copy of the document evidencing export provided for in §1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with §1488.7(c), §1488.10, §1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with §1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with §1488.3, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with §1488.12.

being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

§ 1488.9a Evidence of export for commodities delivered before export.

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in §1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must:

(1) Identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement,

(2) State the quantity and date of entry of the commodity into the destination country, and

(3) Be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which:

(1) Identifies the commodity as that exported under the financing agreement,

(2) States the quantity of the commodity entered under bond and date of entry into the destination country, and

(3) Certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.


(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with §1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; Provided however, That the aggregate of all amounts assessed under this §1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the
Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker’s acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM–5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.


§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank’s obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in §1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to §1488.12(a)(i) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under §1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with §1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by §1488.15 and §1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in §1488.11. The liability of the bank and the importer under their respective obligations shall be several.

Miscellaneous Provisions

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the
Commodity Credit Corporation, USDA

§ 1491.2

purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 [Reserved]

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1488.21 Exporter's records and accounts.

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

§ 1488.22 Communications.

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

(b) [Reserved]

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

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

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

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

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

Subpart B—Cooperative Agreements and Conservation Easement Deeds

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

Subpart C—General Administration

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

AUTHORITY: 16 U.S.C. 3838h–3838i.

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

Subpart A—General Provisions

§ 1491.1 Applicability.

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

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

§ 1491.2 Administration.

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

(b) NRCS will—
(1) Provide overall program management and implementation leadership for FRPP;
(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;
(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land will not exceed 50 percent of the appraised fair market value of the conservation easement;
(4) Determine eligibility of the land, landowner, State government, local government, Indian Tribe, or non-governmental organization;
(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;
(6) Make funding decisions and determine allocations of program funds;
(7) Coordinate with the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;
(8) Sign and monitor cooperative agreements for the Commodity Credit Corporation (CCC) with the selected eligible entity;
(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and
(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.
(c) NRCS will enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

§ 1491.3 Definitions.
The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:
Agricultural uses are defined by the State’s FRPP or equivalent, or where no program exists. Agricultural uses should be defined by the State agricultural use tax assessment program. However, if NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect agricultural use and related conservation values.
Certified entity means an eligible entity that NRCS has determined to meet the requirements of §1491.4(d) of this part.
Chief means the Chief of NRCS or designee.
Commodity Credit Corporation is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. The CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.
Conservation easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.
Conservation plan is the document that—
(1) Applies to highly erodible cropland;
(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;
(3) Is developed by NRCS in consultation with the landowner through the local soil conservation district, in consultation with the local committees, established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909(b)(5)) and the Secretary, or by the Secretary.
Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.
Dedicated fund means an account held by a nongovernmental organization which is sufficiently capitalized for the...
purposes of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.

*Eligible entity* means Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to non-agricultural uses of the land.

*Eligible land* means privately owned land on a farm or ranch that NRCS has determined to meet the requirements of §1491.4(f) of this part.

*Fair market value* means the value of a conservation easement as ascertained through standard real property appraisal methods, as established in §1491.4(g).

*Farm and ranch land of local importance* means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

*Farm and ranch land of statewide importance* means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies concerned. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

*Farm or ranch succession plan* means a general plan to address the continuation of some type of agricultural business on the conserved land. The farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers or ranchers.

*Field Office Technical Guide* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The Field Office Technical Guide (FOTG) contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Forest land* means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

*Forest land of statewide importance* means forest land that the State Conservationist, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State, and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

*Forest management plan* means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by the State Conservationist. The plan complies
with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements.

_Historical and archaeological resources_ mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, et seq.);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

_Inminent harm_ means easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values; for example, those violations that would adversely impact agriculture use, productivity, and related conservation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

_Impervious surface_ means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

_Indian Tribe_ means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

_Land Evaluation and Site Assessment System_ means the land evaluation system approved by the State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

_Landowner_ means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and lease tenants. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

_Natural Resources Conservation Service_ means an agency of the Department of Agriculture.

_Nongovernmental organization_ means any organization that:

(1) Is organized for, and at all times since, the formation of the organization, and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

   (i) In section 509(a)(1) and (2) of that Code, or

   (ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

_Other interests in land_ include any right in real property other than easements that are recognized by State law. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

_Other productive soils_ means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland and farm and ranch land of statewide and local importance.

_Parcel_ means a farm or ranch submitted for consideration for funding under this part.
Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by the Secretary.

Purchase price means the appraised fair market value of the easement minus the landowner donation.

Right of enforcement means a vested right set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the grantee, that the Chief, on behalf of the United States, may exercise under specific circumstances in order to enforce the terms of the conservation easement when not enforced by the holder of the easement.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

§ 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of the CCC, will facilitate and provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting non-agricultural uses of the land. Eligible entities submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the eligible entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements or other interests in land will be in perpetuity unless prohibited by State law. In States that limit the term of the easement or other interest in land, the term of the easement or other interest in land must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in §1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be considered for certification, an entity must submit a written request for certification to NRCS, and must:

(1) Meet the requirements identified in paragraph (c) of this section;

(2) Use or agree to use for FRPP funded acquisitions, the Uniform
§ 1491.4  Standards for Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions in conducting appraisals;

(3) Hold, manage, and monitor a minimum of 25 agricultural land conservation easements, unless the entity requests and receives a waiver of this requirement from the Chief;

(4) Hold, manage, and monitor a minimum of five FRPP or Farmland Protection Program conservation easements;

(5) Have the demonstrated ability to complete acquisition of easements in a timely fashion;

(6) Have the capacity to enforce the provisions of easement deeds;

(7) For nongovernmental organizations, possess a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity;

(8) Be willing to adjust procedures to ensure that the conservation easements acquired meet FRPP purposes and are enforceable; and

(9) Have a plan for administering easements enrolled under this part, as determined by the Chief.

(e) NRCS will notify an entity in writing whether they have been certified and the rationale for the agency’s decision. Once NRCS determines an entity qualifies as certified:

(1) NRCS will enter into a cooperative agreement with the certified entity through which NRCS may obligate funding for up to 5 years. New parcels or prior-year unfunded parcels submitted for funding by certified entities must compete for funding each year. Selected parcels and funding will be added to the existing cooperative agreement using an amendment to the cooperative agreement. Funding expiration dates for the added parcels will be in the amendment to the cooperative agreement;

(2) NRCS will accept applications from certified entities continuously throughout the fiscal year;

(3) Certified entities may elect to close easements without NRCS approving the conservation easement deeds, titles, or appraisals before closing;

(4) Certified entities will prepare the conservation easement deeds, titles, and appraisals according to NRCS requirements as identified in the cooperative agreement;

(5) NRCS will conduct quality assurance reviews of a percentage of the conservation easement transactions submitted by the certified entity for payment. The review will include whether the deed, title review, or appraisal was conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity; and

(6) If a certified entity closes on the easement without a pre-closing NRCS review, and the conservation easement deed, title, or appraisal fails the NRCS quality assurance review, NRCS will provide the certified entity an opportunity to correct the errors. If the certified entity fails to correct the errors to NRCS satisfaction, NRCS may consider decertification of the entity in accordance with paragraph (f) of this section.

(f) Review and decertification of the certified entity. (1) The Chief will conduct a review of the certified entity a minimum of once every 3 years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief will:

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If the State Conservationist has determined the certified entity does not meet the criteria established in § 1491.4(d) after the 180 days, the State Conservationist will send, by certified mail, return receipt requested, written notice of proposed decertification of the entity’s certification status or eligibility for future FRPP funding. This notice will contain what actions have not been completed to retain certification status, what actions the entity...
must take to request certification status, the status of funds in the cooperative agreement, and the eligibility of the entity to apply for future FRPP funds. The entity may contest the Notice of Decertification in writing to the State Conservationist within 20 calendar days of receipt of the notice of proposed decertification.

(3) The period of decertification may not exceed 3 years in duration, with duration of decertification based upon the seriousness of the facts; and

(4) The entity may be recertified upon application to NRCS, after the decertification period has expired, and when the entity has met the requirements as outlined under §1491.4(d).

(g) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, statewide, or locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pastureland, or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pastureland, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before closing, unless the Chief has reviewed and approved an alternative means by which the forest land’s contribution to the economic viability of the land has been demonstrated;

(6) NRCS will not provide FRPP funds for the purchase of an easement or other interest in land on land owned in fee title by an agency of the United States, a State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in part 1400 of this title;

(8) Must possess suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program. Unsuitable conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant and may be offered for participation in the program. However, if an applicant submits an offer for an easement project, the Department of Agriculture (USDA) will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(h) Prior to closing, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions, as selected by the eligible entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality assurance purposes. Entities must provide a copy of the appraisal to NRCS.

(i) The landowner will be responsible for complying with the Highly Erodible
§ 1491.5


(j) The entity may substitute acres within a pending offer. Substituted acres must not decrease the value of the offered easement or the value of the parcel in meeting program purposes. With the State Conservationist’s approval, a cooperating entity may substitute pending offers within their cooperative agreement. The landowner and parcel must meet eligibility criteria as described in §1491.4(e). The State Conservationist may require re-ranking of substituted acres and substituted parcels.


§ 1491.5 Application procedures.

(a) An Indian Tribe, State, unit of local government, or a nongovernmental organization will submit an application to the State Conservationist in the State where parcels are located.

(b) The State Conservationist will determine whether the Indian Tribe, State, unit of local government, or a nongovernmental organization is eligible to participate in FRPP based on the criteria set forth in §1491.4(c).

(c) The Chief will determine whether an eligible entity is a certified entity based on the criteria set forth in §1491.4(d), information provided by the application, and data in the national FRPP database.

(d) The State Conservationist will notify each Indian Tribe, State, unit of local government, or a nongovernmental organization if it has been determined eligible, certified, or ineligible.

(e) Eligible entities with cooperative agreements entered into after the effective date of this part will not have to resubmit an annual application for the duration of the cooperative agreement. Entities may reapply for eligibility when their cooperative agreements expire.

(f) Throughout the fiscal year, eligible entities may submit to the appropriate State Conservationist applications for parcels, in that State, with supporting information to be scored, ranked, and considered for funding.

(g) At the end of each fiscal year, the lists of pending, unfunded parcels will be cancelled unless the eligible entity requests that specific parcels be considered for funding in the next fiscal year. Entities must submit a new list of parcels each fiscal year in order to be considered for funding unless they request that parcels from the previous fiscal year be considered.

§ 1491.6 Ranking considerations and proposal selection.

(a) Before the State Conservationist can score and rank the parcels for funding, the eligibility of the landowner and the land must be assessed.

(b) The State Conservationist will use national and State criteria to score and rank parcels. The national ranking criteria will be established by the Chief, and the State criteria will be determined by the State Conservationist, with advice from the State Technical Committee. The national criteria will comprise at least half of the ranking system score.

(c) At least 30 days before the ranking of parcels, the State Conservationist will announce the date on which ranking of parcels will occur. A State Conservationist may announce more than one date of ranking in a fiscal year.

(d) All parcels submitted throughout the fiscal year will be scored. All parcels will be ranked together in accordance with the national and State ranking criteria before parcels are selected for funding.

(e) The parcels selected for funding will be listed on the agreements of the entities that submitted the parcels, and the agreements will be signed by the State Conservationist and the eligible entity. Funds for each fiscal year’s parcels will be obligated with a new signature each year on an amendment to the agreement. Parcels funded on each fiscal year’s amendment will have a separate deadline for closing and requesting reimbursement.

(f) The national ranking criteria are:

1. Percent of prime, unique, and important farmland in the parcel to be protected;

2. Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected;
(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Proximity of the parcel to other protected land, such as military installations, land owned in fee title by the United States or an Indian Tribe, State government or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(8) Proximity of the parcel to other agricultural operations and infrastructure; and

(9) Other additional criteria as determined by the Chief.

(g) State or local criteria as determined by the State Conservationist, with advice of the State Technical Committee, may include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The performance of an eligible entity’s experience in managing and enforcing easements. Performance must be measured by the closing efficiency or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported. The number of years of an eligible entity’s existence, budget, or staffing level will not be used as a ranking factor;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, and environmental benefits;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the Land Evaluation and Site Assessment system. This score serves as a measure of agricultural viability (access to markets and infrastructure); and

(7) Existence of a farm or ranch succession plan or similar plan established to encourage farm viability for future generations.

(h) State ranking criteria will be developed on a State-by-State basis. The State Conservationist will make available a full listing of applicable national and State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of the CCC, will enter into a cooperative agreement with entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary FRPP requirements. The cooperative agreement must address:

(1) The interests in land to be acquired, including the United States’ right of enforcement, as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with FRPP funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with FRPP funds;

(5) The allowance of parcel substitution upon mutual agreement of the parties; and

(6) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(b) The term of cooperative agreements will be 5 years for certified entities and 3 years for other eligible entities.
§ 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the eligible entity, will determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement consistent with §1491.4(g). An eligible entity will share in the cost of purchasing a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The eligible entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(f) NRCS will conduct its technical and administrative review of appraisals and its hazardous materials reviews with FRPP funds.

(g) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist will not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(h) Environmental Services Credits:

1. NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement;

2. NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part; and

3. If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement will require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum allowed under State law.

(c) The eligible entity may use its own terms and conditions in the conservation easement deed, but the conservation easement deed must be reviewed and approved by National Headquarters in advance of use. Individual conservation easement deeds used by the eligible entity will be submitted to National Headquarters at least 90 days before the planned closing date. Eligible entities with multiple parcels in a cooperative agreement may submit a conservation easement deed template for review and approval. The deed template must be reviewed and approved by National Headquarters in advance of use. For eligible entities that have not been certified, the NRCS State offices will review prior to closing the conservation easement deeds for individual parcels to ensure that they contain the same language as approved by the national office and that the appropriate site-specific information has been included. NRCS reserves the right.
to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States. The Chief may exercise the option to promulgate standard minimum conservation deed requirements as a condition for receiving FRPP funds.

(d) The conveyance document must include a right of enforcement clause. NRCS will specify the terms for the right of enforcement clause to read as set forth in the FRPP cooperative agreement. This right is a vested property right and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the FOTG. NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the 1985 Act, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) NRCS will sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation will be provided to NRCS by the eligible entity.

(i) Impervious surfaces will not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. The State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces. Before waiving the 2 percent limitation, the State Conservationist must consider, at a minimum, population density, the ratio of open prime other important farmland versus impervious surfaces on the easement area, the impact to water quality concerns in the area, the type of agricultural operation, and parcel size. Eligible entities may submit an impervious surface limitation waiver process to the State Conservationist for review and consideration. The eligible entities must apply approved impervious surface limitation waiver processes on a parcel-by-parcel basis. State Conservationists will not approve blanket waivers of the impervious surface limitation for all parcels administered by the eligible entity without regard for the characteristics of individual parcels. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part. The conservation easement deed must require that NRCS approve any substantive amendment.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the easement terms, the eligible entity will notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the conservation easement as determined by the Chief, the Chief or his or her successors or assigns may exercise the United States' rights to enforce the
§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

(a) If it is determined by NRCS that a eligible entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such an eligible entity during the applicable period may be withheld or be required to be refunded, with interest, as determined appropriate by NRCS on behalf of the CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, and depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

PART 1492 [RESERVED]

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

Sec.
1493.1 General statement.
1493.2 Purposes of programs.
1493.3 Restrictions on programs and cargo preference statement.
1493.4 Criteria for country allocations.
Commodity Credit Corporation, USDA

§ 1493.2

1493.5 Criteria for agricultural commodity allocations.
1493.6 Additional required determinations for GSM–103.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

1493.10 General statement.
1493.20 Definition of terms.
1493.30 Information required for program participation.
1493.40 Application for a payment guarantee.
1493.50 Certification requirements for obtaining payment guarantee.
1493.60 Payment guarantee.
1493.70 Guarantee rates and fees.
1493.80 Evidence of export.
1493.90 Certification requirements for the evidence of export.
1493.100 Proof of entry.
1493.110 Notice of default and claims for loss.
1493.120 Payment for loss.
1493.130 Recovery of losses.
1493.140 Miscellaneous provisions.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

1493.200 General statement.
1493.210 Definition of terms.
1493.220 Exporter eligibility.
1493.230 Eligible transactions.
1493.240 Initial application and letter of preliminary commitment.
1493.250 Final application and issuance of a facility payment guarantee.
1493.260 Facility payment guarantee.
1493.270 Certifications.
1493.280 Evidence of export report.
1493.290 Proof of entry.
1493.300 Notice of default and claims for loss.
1493.310 Payment for loss.
1493.320 Recovery of losses.
1493.330 Miscellaneous provisions.

Subpart D—CCC Supplier Credit Guarantee Program Operations

1493.400 General statement.
1493.410 Definition of terms.
1493.420 Information required for program participation.
1493.430 Application for a payment guarantee.
1493.440 Certification requirements for payment guarantee.
1493.450 Payment guarantee.
1493.460 Guarantee rates and fees.
1493.470 Evidence of export.
1493.480 Certification requirements for the evidence of export.
1493.490 Proof of entry.
1493.500 Notice of default and claims for loss.
1493.510 Payment for loss.
1493.520 Recovery of losses.
1493.530 Miscellaneous provisions.


Source: 59 FR 52876, Oct. 19, 1994, unless otherwise noted.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions which apply to the use of credit guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) and the criteria considered by CCC in determining the annual allocations of credit guarantees to be made available with respect to each participating country. This subpart also sets forth the criteria considered by CCC in the review and approval of proposed allocation levels for GSM–102 and/or GSM–103 credit guarantees which may be made available in connection with export sales of specific U.S. agricultural commodities to these countries. These restrictions and criteria are interrelated and will be applied and considered together in the process of determining which sales opportunities under GSM–102 or GSM–103 will best meet the purposes of the programs.

§ 1493.2 Purposes of programs.

CCC may use export credit guarantees:
(a) To increase exports of U.S. agricultural commodities;
(b) To compete against foreign agricultural exports;
(c) To assist countries, particularly developing countries, in meeting their food and fiber needs; and
(d) For such other purposes as the Secretary of Agriculture determines appropriate, consistent with the provisions of §1493.6.
§ 1493.3 Restrictions on programs and cargo preference statement.

(a) Restrictions on use of credit guarantees. (1) Export credit guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) Cargo preference laws. The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under these programs.

§ 1493.4 Criteria for country allocations.

The criteria considered by CCC in reviewing proposals for country allocations under the GSM–102 or GSM–103 programs, will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability of the importing country to adequately service CCC guaranteed debt;

(c) Financial status of participating banks in the importing country as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the importing country as it would affect its ability to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the importing country to CCC or to lenders protected by CCC’s guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

The criteria considered by CCC in reviewing proposals for specific U.S. commodity allocations within a specific country allocation will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the export credit guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits of providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities; and

(d) Evaluation of the near and long term potential for sales on a cash basis of the U.S. commodity under consideration.

§ 1493.6 Additional required determinations for GSM–103.

Notwithstanding any other provision under this part, CCC shall not guarantee under the GSM–103 program the repayment of credit made available to finance an export sale unless the Secretary of Agriculture determines that such sale will:

(a) Develop, expand or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities, without displacing normal commercial sales;

(b) Improve the capability of the importing country to purchase or use, on a long-term basis, U.S. agricultural commodities; or

(c) Otherwise promote the export of U.S. agricultural commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

§ 1493.10 General statement.

(a) Overview. (1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103). The GSM–102 and GSM–103 programs of the Commodity Credit
Commodity Credit Corporation, USDA

§ 1493.10

Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM–102, credit guarantees are issued for terms of up to three years. Under GSM–103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC’s guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter’s right to proceeds, specified amounts of principal and interest due from, but not paid by, the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC’s guarantee coverage pertains. By approving an exporter’s application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in §1493.2.

(b) Credit facility mechanism. Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM–102 and GSM–103 programs, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment to the exporter, or the exporter’s assignee, in U.S. dollars as such payments become due. The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferral payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM–102 and GSM–103 programs are designed to protect the exporter or the exporter’s assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) Program administration. The GSM–102 and GSM–103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see §1493.20(c), “Contacts P/R”).
§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM–102 and GSM–103 programs will have the following meanings:

(a) **Assignee.** A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) **CCC.** The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) **Contacts P/R.** A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM–102 or GSM–103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) **Date of export.** One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) **Date of sale.** The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) **Discounts and allowances.** Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity’s value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements
made in favor of the importer for quality or weight.

(g) Eligible interest. The maximum amount of interest, based on the interest rate indicated in CCC’s payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter’s assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) Exported value. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) Exporter. A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of §1493.30.

(j) FAS/USDA. The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) Foreign bank letter of credit. An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 500, or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) GSM. The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) GSM–102. A CCC program, also referred to as the “Export Credit Guarantee Program,” under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) GSM–103. A CCC program, also referred to as the “Intermediate Export Credit Guarantee Program,” under which payment guarantees are approved for a credit period no less than 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(o) Guaranteed value. The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC’s payment guarantee, as indicated on the face of the payment guarantee.

(p) Importer. A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) Incoterms. The following customary terms, as defined by the International Chamber of Commerce, Incoterms (current revision):

(1) Free Alongside Ship (FAS),
(2) Free on Board (FOB),
§ 1493.20

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF), and

(4) Cost Insurance and Freight (CIF).

(v) Intervening purchaser. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) Late interest. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(t) Payment guarantee. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter’s assignee in the event of a default by a foreign bank on its payment obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank’s related obligation.

(u) Notice to participants. A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter’s application for such payment guarantee is approved.

(v) Port value. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(w) Program announcement. An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

(x) Related obligation. A contractual commitment by the foreign bank issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any contractual interest, in U.S. dollars, to a financial institution in the United States on deferred payment terms consistent with those permitted
Commodity Credit Corporation, USDA

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM–102 program or the GSM–103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the programs.

(a) Submission of documentation. In order to qualify for participation in the GSM–102 and GSM–103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant’s headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM–102 or GSM–103 export sale contemplated by the applicant;

(5) A certified statement describing the applicant’s participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: “I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. [‘Principals,’ for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC.”

(b) Previous qualification. Any exporter that has previously qualified under this section may submit applications for GSM–102 or GSM–103 payment guarantees. Each application must include the statement required by §1493.40(a)(18) incorporating the certifications of §1493.50, including the certification in §1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.
§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

1. Name of the destination country.
2. Name and address of the importer.
3. Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country.
4. Date of sale.
5. Exporter’s sale number.
6. Delivery period as agreed between the exporter and the importer.
7. A full description of the commodity (including packaging, if any).
8. Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance.
9. Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.
10. Description and value of discounts and allowances, if any.
11. Port value (includes upward loading tolerance, if any).
12. Guaranteed value.
14. Name and location of the foreign bank issuing the letter of credit.
15. The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.
16. A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable.
17. Other information as specified in Notices to Participants, as applicable.
18. The exporter’s statement, “All Section 1493.50 Certifications Are Being Made In This Application” which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in §1493.60(b). If, based upon a price review, the unit sales price of the commodity does not fall
§ 1493.50 Certification requirements for obtaining payment guarantee.

By providing the statement in §1493.40(a)(18), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in §1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.20(z).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to §1493.30 has not changed, the exporter still meets all of the qualification requirements of §1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.


§ 1493.60 Payment guarantee.

(a) CCC’s obligation. The payment guarantee will provide that CCC agrees to pay the exporter or the exporter’s assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) Period of guarantee coverage. The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter’s application for a payment guarantee.

(c) Terms of the CCC payment guarantee. The terms of CCC’s coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) Final date to export. The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) Reserve coverage for loading tolerances. The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may
also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) Ineligible exports. Commodities with a date of export prior to the date of receipt by CCC of the exporter’s telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM–102 or GSM–103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) Foreign agricultural component. CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in §1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) Additional requirements. The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter’s assignee.

(i) Amendments. A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC’s liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter’s assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) Guarantee fee rates. The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM–102 and GSM–103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(b) Calculation of fee. The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) Payment of fee. The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter’s check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) Refunds of fee. Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC’s approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved
Commodity Credit Corporation, USDA

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in §1493.80(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in §1493.80(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.20(z).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter’s sales contract with the importer have been exported to the

§ 1493.80 Evidence of export.

(a) Report of export. The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number
(2) Date of export
(3) Exporter’s sale number
(4) Exported value
(5) Quantity
(6) A full description of the commodity exported
(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter’s application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference.
(8) Description and value of discounts and allowances, if any.
(9) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(b) Time limit for submission of evidence of export. The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guar-
§ 1493.100 Proof of entry.

(a) Diversion. The diversion of commodities covered by a GSM–102 or GSM–103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) Records of proof of entry. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM–102 or GSM–103 programs in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;
(2) The identification of the export carrier;
(3) The quantity of the agricultural commodity;
(4) The kind, type, grade and/or class of the agricultural commodity; and
(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. [Records of proof of entry need not be submitted with a claim for loss, except as may be provided in §1493.110(b)(4)(ii).]

§ 1493.110 Notice of default and claims for loss.

(a) Notice of default. If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter’s assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter’s assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;
(2) Name of the country;
(3) Name of the defaulting bank;
(4) Due date;
(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
(6) Date of foreign bank’s refusal to pay, if applicable; and
(7) Reason for foreign bank’s refusal to pay, if known.

(b) Filing a claim for loss. A claim for a loss by the exporter or the exporter’s assignee will not be paid if it is made later than six months from the due
Commodity Credit Corporation, USDA § 1493.120

Payment for loss.

(a) Determination of CCC’s liability. Upon receipt in good order of the information and documents required under §1493.110, CCC will determine whether or not a loss has occurred for which date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the foreign bank obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter’s assignee that each page of each document is a true and correct copy:

(i)(A) The foreign bank letter of credit securing the export sale; and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank’s letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:

(1) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to finance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit or;

(2) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obliged to repay the U.S. financial institution on deferred payment terms or;

(3) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation or;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter’s assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to §1493.80(a).

(c) Subsequent claims for defaults on installments. If the initial claim is found in good order, the exporter or an exporter’s assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign bank to make scheduled installments on the same export shipment, the exporter or the exporter’s assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§1493.120 Payment for loss.

(a) Determination of CCC’s liability. Upon receipt in good order of the information and documents required under §1493.110, CCC will determine whether or not a loss has occurred for which

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the on-board ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

(iii)(A) The exporter’s invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter’s invoice to the intervening purchaser and the intervening purchaser’s invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter’s assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to §1493.80(a).
§ 1493.130 Recovery of losses.

(a) Notification. Upon payment of loss to the exporter or the exporter’s assignee, CCC will notify the foreign bank of CCC’s rights under the subrogation agreement to recover all monies in default.

(b) Receipt of monies. (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter’s assignee from the importer, the foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will owe to CCC interest from the date of recovery to the date of payment by the exporter or the exporter’s assignee to CCC. Such interest will be charged only on CCC’s share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the
Commodity Credit Corporation, USDA § 1493.130

payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) Allocation of recoveries. Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter’s assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter’s assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM–102 or GSM–103 payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries provides an example of the methodology used by CCC in applying this paragraph (c).

(d) Liabilities to CCC. Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter’s assignee has engaged in fraud or otherwise violated program requirements.

(e) Good faith. The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(e) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) Cooperation in Recoveries. Upon payment by CCC of a claim to the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

APPENDIX A TO § 1493.130—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC’s policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM–102 and GSM–103 programs. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and annual payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. The foreign bank fails to make the final principal payment of $100,000 and an interest payment of $10,000, both due on January 31.

3. On February 10, the U.S. bank files a claim in good order with CCC.

4. CCC’s guarantee states that CCC’s maximum liability is limited to 98 percent of the principal amount due ($98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal ($7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of non-payment (January 31) is 9 percent. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of non-payment by CCC (February 11) is 7 percent.
§ 1493.140

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

   (a) Principal coverage—98% × $100,000 = $98,000.00
   (b) Interest coverage—5% × $98,000.00 = $4,900.00

   Late interest due from CCC (7% per annum for 11 days × $105,840.00) = $223.28

   Amount paid by CCC on February 22 = $106,063.28

2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

   (a) Principal due January 31 = $100,000.00
   (b) Interest due January 31 (12% × $100,000.00) = $12,000.00

   Amount owed by foreign bank as of January 31 = $110,000.00

   Penalty interest due (12% per annum for 22 days × $100,000.00) = $795.62

   Amount owed by foreign bank as of February 22 = $110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: $4,668.55

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $110,000, CCC would be entitled to 95.75 percent ($106,063.07 divided by $110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent ($4,668.55 divided by $110,765.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) Assignment. (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

   (i) Made to one party acting for two or more parties or
   (ii) Subject to further assignment.

   (2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

   (3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

   (4) The name and address of the assignee must be included on the written notice of assignment.

(b) Ineligibility of financial institutions to receive an assignment. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

   (1) Is not in sound financial condition, as determined by the Treasurer of CCC; or
   (2) Is the financial institution issuing the letter of credit or branch, agency, or subsidiary of such institution; or
   (3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or
   (4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) Ineligibility of financial institutions to receive proceeds. A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:
Commodity Credit Corporation, USDA

§1493.140

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) Alternative satisfaction of payment guarantees. CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter’s assignee), establish procedures, terms and/or conditions for the satisfaction of CCC’s obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC’s obligation.

(e) Maintenance of records and access to premises. (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter’s assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 or GSM–103 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter’s assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter’s, exporter’s assignee’s, agent’s, intervening purchaser’s or related company’s books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter’s assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the FSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by §1493.100(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) Responsibility of program participants. It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 or GSM–103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) Submission of documents by principal officers. All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters’ assignees under this subpart must be signed by a principal or officer of the exporter or exporter’s assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority;

967
§ 1493.200 General statement.

This subpart governs the Commodity Credit Corporation’s (CCC) Facility Guarantee Program (FGP). CCC will issue facility payment guarantees for project applications meeting the terms and conditions of the Facility Guarantee Program (FGP) and where private sector financing is otherwise not available. This subpart describes the criteria and procedures for applying for a facility payment guarantee, and contains the general terms and conditions of such a guarantee. These general terms and conditions may be supplemented by special terms and conditions specified in program announcements or notices to participants published prior to the issuance of a facility payment guarantee and, if so, will be incorporated by reference on the face of the facility payment guarantee issued by CCC.

§ 1493.210 Definition of terms.

Terms set forth in this subpart will have the following meaning:

Assignee. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive payment under the facility payment guarantee.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the U.S. Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948, as amended, 15 U.S.C. 714 et seq., and subject to the general supervision and direction of the Secretary of Agriculture.

Contacts P/R. A notice issued by Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA) by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of facility payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

Contract value. The total negotiated dollar amount for the export sale of goods and services to emerging markets.

Date of export for goods. The on-board date of an ocean bill of lading or an airway bill, the on-board ocean carrier date of an intermodal bill of lading; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.
§ 1493.230 Eligible transactions.

(a) Program announcements. From time to time CCC will issue program announcements indicating the availability of facility payment guarantees in connection with sales of goods or services to emerging markets. The announcements will specify the emerging markets, the maximum amount, in U.S. dollars, of guarantee exposure that CCC will undertake, and may specify special terms or conditions that will be applicable.

(b) Sale requirements. CCC will issue facility payment guarantees only in connection with projects that CCC determines will benefit primarily exports of U.S. agricultural commodities and products, and only where there is a firm contract for the sale of goods or services for the establishment or improvement of an agriculture-related facility. The contract may be contingent, however, on the issuance of a CCC facility payment guarantee.

(c) Initial payment requirement. The contract for sale of goods or services between the exporter and the importer shall oblige the importer to make an initial payment(s) to the exporter of at least 15 percent of the net contract value in §1493.260(b)(1). Such initial payment(s) shall be in U.S. dollars or instruments having a definite value in U.S. dollars, and shall be made prior to the export of the goods or services.

(d) Required method of payment. CCC will issue a facility payment guarantee only in connection with a sale in which payment will be made under either:

(1) An irrevocable foreign bank letter of credit specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as payments become due; or

(2) An irrevocable foreign bank letter of credit supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment in U.S. dollars as such payments become due.

(e) Form of letter of credit. The foreign bank letter of credit referred to in paragraph (d) of this section shall be an irrevocable commercial letter of credit,
subject to the revision of the International Chamber of Commerce Uniform Customs and Practices for Documentary Credits; in effect when the letter of credit is issued, providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(f) Form of related obligation. The related obligation referred to in paragraph (d) of this section shall be in one of the following forms:

(1) A letter of credit including a specific promise to pay on deferred payment terms as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit;

(2) A separate document specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obligated to repay the U.S. financial institution on deferred payment terms;

(3) A separate document setting forth the related obligation, or in a duly executed amendment thereto, and subject to, repayment in accordance with the terms of such related obligation; or

(4) A promissory note executed by a foreign bank issuing the letter of credit in favor of the financial institution.

§ 1493.240 Initial application and letter of preliminary commitment.

(a) Initial application. An exporter may apply for a facility payment guarantee by submitting the following information:

(1) A cover sheet with the title: “Application for a Facility Payment Guarantee—Preliminary Commitment”;

(2) The program announcement number;

(3) The emerging market;

(4) The name, contact person, address, and telephone number and, if applicable, facsimile number and E-mail address of:

(i) The exporter;

(ii) The exporter’s registered agent for service of process in the United States;

(iii) The exporter’s assignee, if applicable;

(iv) The importer;

(v) The end-user of the goods or services if other than the importer;

(vi) The foreign bank expected to issue the letter of credit or related obligation; and

(vii) The financial institution in the United States expected to provide financing;

(5) A statement on letterhead from a:

(i) Foreign bank indicating an interest in guaranteeing payment, in U.S. dollars, for goods or services to be exported under the facility payment guarantee at least equal to the net contract value listed in paragraph (a)(14) of this section, less the initial payment requirement listed in paragraph (a)(15) of this section; and

(ii) Financial institution in the U.S. indicating an interest in financing the export sales of goods or services under the facility payment guarantee for an amount at least equal to the net contract value listed in paragraph (a)(14) of this section less the initial payment requirement listed in paragraph (a)(15) of this section. The financial institution must state that such financing would not otherwise be available without an FGP payment guarantee;

(6) The period for which credit is being extended to finance the sale of goods or services covered by the facility payment guarantee;

(7) The exporter’s sales number pertinent to this application and a description of the status of the intended sale;

(8) A description (e.g., a process flow diagram) of the agriculture-related facility that will use the goods or services to be covered by the facility payment guarantee and an explanation of how these goods and services will be used to improve handling, marketing, processing, storage, or distribution of agricultural commodities or products;

(9) A brief description of each good or service to be covered by the facility payment guarantee including, where applicable, brand name, model number, Standard Industrial Classification (SIC) or the North American Industry Classification System (NAICS) code, and contract specifications;
Commodity Credit Corporation, USDA § 1493.240

(10) The final date for export of goods or services. If applicable, include construction start date, milestones (e.g., installation), and contractual deadline for completion of project;

(11) The contract value for the sale of goods or services and the basis of sale for goods to be exported (e.g., FOB, CFR, CIF);

(12) The description and value of the goods or cost of services listed in paragraph (a)(11) of this section that are not U.S. goods or services;

(13) Identification and cost of, and justification for, those services listed in paragraph (a)(12) of this section for which the exporter requests CCC to provide coverage;

(14) The net contract value in § 1493.260(b)(1) obtained by subtracting paragraph (a)(12) of this section from paragraph (a)(11) of this section, and adding paragraph (a)(13) of this section;

(15) The amount to be paid in accordance with the initial payment requirement (§ 1493.230(c));

(16) The description and dollar amount of discounts and allowances provided in connection with the sale of goods or services covered by the facility payment guarantee;</n
(17) The facility base value in § 1493.260(b)(2) obtained by subtracting paragraphs (a)(15) and (a)(16) of this section from paragraph (a)(14) of this section;

(18) The maximum guaranteed value under the facility payment guarantee determined by multiplying the facility base value listed in paragraph (a)(17) of this section by the guarantee rate of coverage announced by CCC in § 1493.260(b)(3);

(19) A map or other description of the facility’s location and distance from major population centers of neighboring countries;

(20) For all principal agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed, by the proposed project after completion, provide:

(i) A list or table identifying such principal inputs;

(ii) The likely countries of origin for each input;

(iii) Estimated annual quantities, in metric tons, of each input listed in paragraph (a)(20)(i) of this section to be used by the project for five years from the final date of export or until the expiration of the facility payment guarantee, whichever comes first; and

(iv) An analysis, including price, cost, and other assumptions (the reasons why U.S. agricultural commodities or products will be more competitive inputs than commodities or products from other sources, and whether the projected use of U.S. agricultural commodities or products depends on the availability of U.S. export bonus or credit guarantee programs), of which inputs listed in paragraph (a)(20)(i) of this section will represent increased imports of U.S. agricultural commodities or products:

(A) To a greater degree than imports of agricultural commodities or products from other countries;

(B) To or at levels significantly above those expected in the absence of the project; and

(C) For a period of five years from the final date of export or until expiration of the facility payment guarantee, whichever comes first.

(21) If applicable, a list of agricultural outputs or final products of the proposed project and:

(i) Projected annual quantities (for five years or until the expiration of the facility payment guarantee, whichever comes first), in metric tons, of each output to be marketed;

(A) Within the emerging market; and

(B) In any other country;

(ii) Quantities, by country of origin, of products imported into the emerging market during the past year which would compete with such outputs; and

(iii) An analysis of whether products of the project will significantly displace U.S. exports of similar agricultural commodities or products in any market;

(22) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing financing to the exporter in connection with this export sale, and copies of any documents relating to such arrangements;

(23) A description of the exporter’s experience selling goods or providing services similar to those for which the
exporter seeks to obtain facility payment guarantee coverage;

(24) A statement of how this project may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the emerging market. Include in the statement the share of private sector ownership of the project;

(25) The exporter’s signature.

(b) Application fee. The exporter shall pay the application fee specified in the program announcement at the time the application is submitted. An application will not be considered without payment of the specified fee. The application fee is nonrefundable.

(c) Letter of preliminary commitment. CCC will determine whether, in its judgment, the project in connection with which the exporter seeks a facility payment guarantee is likely to increase exports of U.S. agricultural commodities or products to an emerging market; and whether the project is likely to benefit primarily U.S. agricultural commodities or products as opposed to commodities or products originating in other countries. If necessary, CCC may seek additional information from an applicant prior to making its determination. If CCC determines that an application meets these standards and appears to represent, in CCC’s judgment, the best use of available resources, CCC will respond to the applicant with a letter of preliminary commitment indicating CCC’s interest in issuing a facility payment guarantee conditioned on its approval of the exporter’s final application.

§ 1493.250 Final application and issuance of a facility payment guarantee.

(a) Final application. An exporter who has received a letter of preliminary commitment may, within six months of the date of such letter, submit a final application to CCC for a facility payment guarantee which shall include the following information:

(1) A cover sheet with the title: “Application for a Facility Payment Guarantee—Final Commitment.”

(2) A letterhead statement from the importer’s bank or other documentation confirming the importer has the financial ability to comply with the initial payment requirement in §1493.230(c);

(3) Written evidence of a firm sale signed by the exporter and the importer, specifying at minimum, the following information: Goods or services to be exported, quantities of such items, delivery terms (e.g., FOB, CFR, CIF), delivery period(s), contract value, payment terms, and date of sale. A sales contract may be contingent upon obtaining a facility payment guarantee;

(4) A description of any changes in the information submitted in the preliminary application; and

(5) The exporter’s signature;

(b) Additional information. CCC shall have the right to request the exporter to furnish any other information and documentation it deems pertinent to the evaluation of the exporter’s final application for a final commitment. CCC may request from the exporter an independent engineering study or economic feasibility study relating to the project.

(c) Final commitment letter. After making a favorable determination on the exporter’s submissions, CCC will issue a final commitment letter indicating the applicable exposure fee rate and stating that CCC is prepared to issue a facility payment guarantee upon receiving full payment of the exposure fee within an allotted time. The letter will also indicate the key terms and coverage of the guarantee to be issued. CCC will also inform exporters in writing when it denies their request for a facility payment guarantee.

(d) Exposure fee. The exposure fee is calculated by multiplying the requested guaranteed value (up to the maximum established by CCC’s final commitment letter) by the exposure fee rate. Once the facility payment guarantee is issued to the exporter, CCC will ordinarily not refund the exposure fee. If CCC does not issue a facility payment guarantee, or issues a guarantee for only part of the coverage requested, CCC will make a full or pro rata refund of the exposure fee, as appropriate.

(e) Issuance of the facility payment guarantee. Upon receipt of the exposure
fee. CCC will issue a facility payment guarantee.

§ 1493.260 Facility payment guarantee.

(a) CCC’s maximum obligation. CCC will agree to pay the exporter or the exporter’s assignee an amount not to exceed the guaranteed value stipulated on the face of the facility payment guarantee, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or related obligation. The exact amount of CCC’s liability in the event of default will be determined in accordance with §1493.310(b).

(b) Calculation of maximum guarantee coverage. CCC will determine the maximum amount of its obligation under a facility payment guarantee by calculating:

1. Net contract value equal to the contract value minus:
   i. The value of goods that are not U.S. goods; and
   ii. The cost of services that are not U.S. services (except those services the exporter requests CCC to determine are vital to the success of the project and approved to be included in the net contract value);

2. Facility base value equal to net contract value minus:
   i. The amount to be paid in accordance with the initial payment requirement in §1493.230(c); and
   ii. The amount of discounts and allowances; and

3. Maximum guaranteed value equal to:
   i. A principal amount determined by multiplying the facility base value (as determined in §1493.260(b)(2)) by the guaranteed percentage specified in the program announcement; and
   ii. Interest on such principal amount at the rate specified in the applicable program announcement, not to exceed the investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(c) Value and cost. For the purposes of this section:

1. Value means declared customs value of the goods; or, in the absence of specific information regarding declared customs value, the fair market wholesale value of the imported goods in the United States at the time they were acquired by the participant; and

2. Cost means actual amount paid by the exporter for the services in an arms-length transaction; or in the absence of an arms-length transaction, the fair market value of the services at the time the services were provided.

(d) U.S. content test. (1) CCC will issue a guarantee only if the following items collectively represent less than 50 percent of the net contract value in §1493.260(b)(1):

   i. The value of imported components (except for raw materials) that are assembled, processed, or manufactured into U.S. goods included in the net contract value;

   ii. The cost of services that are not U.S. services (including freight on foreign flag carriers and transportation insurance registered with foreign agents) that, at the request of the exporter, CCC determines are vital to the success of the project and approves their inclusion in the net contract value;

(2) For purpose of this subsection, minor or cosmetic procedures (e.g., affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing; and

(3) For purpose of this subsection, local services which involve costs for hotels, meals, transportation, and other similar services incurred in the emerging market are not U.S. services.

(e) Period of guarantee coverage. The payment guarantee will apply to the period beginning on the date(s) of export(s) and will continue during the credit term specified in the facility payment guarantee. For goods, the period of coverage will also apply from the date on which interest begins to accrue, if earlier than the date of export. The final payments of principal and interest by the foreign bank must come due within the period of guarantee coverage.

(f) Terms of the CCC facility payment guarantee. The terms of CCC’s coverage will be set forth in the facility payment guarantee and will include the provisions of this subpart, which may be supplemented by any program announcement(s) or notice(s) to participants in effect at the time the facility
payment guarantee is approved by CCC.

(g) Final date to export. The final date to export will be stated in the facility payment guarantee.

(h) Ineligible exports. Goods or services with a date of export prior to the date CCC issues the facility payment guarantee are ineligible for coverage unless approved by the GSM.

(i) Additional requirements. The facility payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the facility payment guarantee, are binding on the exporter or the exporter’s assignee.

(j) Amendments. Exporters must notify CCC of any amendments concerning contracts covered by a facility payment guarantee. CCC will determine if the contract amendments will require amendments to the facility payment guarantee. Amending the facility payment guarantee may result in an increase to the exposure fee. Requests made by the exporter to amend the facility payment guarantee so as to change the guaranteed value must have the concurrence of the assignee when an assignment has been made.

(k) Effective date. The facility payment guarantee shall become effective on the date of export of the goods or services.

APPENDIX TO §1493.260—Illustration of FGP Coverage of Imported Raw Materials, Components, and Services That Are Not U.S. Services

The following example illustrates CCC’s regulations and policy options with regard to issuing a payment guarantee for a project which includes imported raw materials, imported components, and services that are not U.S. services:

1. Ten grain trucks and one truck scale are to be exported from the U.S. to an emerging market. The trucks will provide the ability to purchase larger quantities of grain from the U.S. The contract value totals $2,025,000, cost, insurance and freight (CIF) basis.

2. The fenders, hoods and doors of the trucks have been manufactured and assembled in the U.S. and contain some imported raw materials (sheet metal).

3. Imported components consist of starters and alternators, with a U.S. customs valuation of $149,000. These items are installed into the trucks in the U.S.

4. The truck scale was imported from Canada into the U.S. with a U.S. customs valuation of $20,000.

5. A U.S. citizen, will travel on a foreign airline carrier to the emerging market (airfare is $1,000) to instruct mechanics in repair and maintenance of the trucks. He will be paid a salary for this service and, in addition, will be reimbursed separately for local costs in the emerging market (e.g., hotel, meals, transportation) which are estimated to be $5,000.

6. The trucks are to be shipped on foreign flag vessels, and the marine insurance is to be placed with a foreign agent. The combined cost of these services that are not U.S. services for which the exporter seeks coverage is estimated to be $500,000.

CCC’s Approval of Services That Are Not U.S. Services

CCC agrees to include in the net contract value the foreign flag freight and marine insurance ($500,000) and the airfare ($1,000) of the U.S. instructor (§1493.260(b)(1)).

Calculation of Net Contract Value

CCC will calculate the net contract value by subtracting from the contract value ($2,025,000) the U.S. customs value of the truck scale ($20,000) in accordance with §1493.260(b)(1)(I) and the local costs to be incurred by the U.S. instructor ($5,000) in accordance with §1493.260(b)(1)(ii) to equal $2,000,000.

CCC’s Determination of U.S. Content Eligibility

The imported components and services that are not U.S. services approved for coverage total $650,000 (i.e., $149,000 for starters and alternators, $1,000 for airfare, $500,000 for freight and insurance; or 32.5 percent of the net contract value of $2,000,000 (§1493.260(b)(1))). Since this is less than 50 percent of the net contract value the transaction meets the U.S. content test (§1493.260(d)).

§1493.270 Certifications.

(a) Exporter’s signature. The exporter’s signature on documentation submitted to CCC under this subpart, is the exporter’s certification that:

1. There have not been and are no arrangements for any payments in violation of the Foreign Corrupt Practices Act of 1977, as amended, or other U.S. laws;

2. All information submitted to CCC is true and correct; and

3. The exporter is in compliance with this subpart.
(b) False certification. False certifications under this subpart may result
in the termination of the facility payment guarantee, suspension or debar-
ment, or civil or criminal action.

§1493.280 Evidence of export report.

(a) Report of export. The exporter is
required to provide CCC an evidence of
export report for each shipment of
goods or provision of services covered
under the facility payment guarantee.
Each report must be numbered in
chronological order and contain the
following information in the order pre-
scribed below:
(1) The facility payment guarantee
number;
(2) The date goods or services were
exported or provided;
(3) The exporter’s sale number, bill of
lading numbers, or identification of
other documents that may be sub-
mitted to establish the contract value
of the goods or services exported or
provided;
(4) The net contract value of the ex-
ported goods or services as determined
in accordance with §1493.260(b)(1);
(5) The amount paid in accordance
with the initial payment requirement
(§1493.230(c));
(6) A description and dollar value of
discounts and allowances, if any;
(7) The exported value of the ship-
ment which is the net contract value of
the goods or services exported in para-
graph (a)(4) of this section minus:
(i) The initial payment requirement
listed in paragraph (a)(5) of this sec-
tion; and
(ii) The dollar amount of any dis-
counts and allowances listed in para-
graph (a)(6) of this section;
(8) The name of the carrier and, if ap-
plicable, the name of the vessel;
(9) The final payment schedule show-
ing the payment due dates and
amounts of principal, and payment due
dates for interest accrual. If the pay-
ment schedule is unknown, the ex-
porter must indicate in writing that:
“The payment schedule will be pro-
vided in an amendment to the evidence
of export report when the payment
schedule has been determined;”
(10) Written statements that:
(1) The goods exported or services
provided were included in the final ap-
plication for a final commitment as ap-
proved by CCC for coverage under the
facility payment guarantee and this
subpart;
(ii) The specifications and quantity
of goods or services exported conform
to the information contained in the ex-
porter’s application documents for a fa-
cility payment guarantee, or if dif-
ferent, that CCC has approved of such
changes;
(iii) A letter of credit has been
opened in favor of the exporter by the
foreign bank shown on the facility pay-
ment guarantee to cover the dollar
amount of the sale of goods or services
exported less the amount paid in ac-
cordance with the initial payment re-
quirement and less discounts and al-
lowances; and
(11) The exporter’s signature.

(b) Final report of export. The final
evidence of export report submitted
under a facility payment guarantee
must contain:
(1) A written statement that exports
under the facility payment guarantee
have been completed;
(2) The information requested in
§1493.280(a) for the shipment(s) in-
cluded in the final report; and
(3) The combined total of all dollar
amounts reported under §1493.280 (a)
and (b) for all reports.

(c) Time limit for submission of evidence
of export report. Unless extended by CCC
for good cause, the exporter must sub-
mitt to CCC an evidence of export re-
port:
(1) Within 60 days of the date goods
are exported by rail or truck;
(2) Within 30 days of the date goods
are exported by any other carrier; or
(3) Within 30 days of the date of ex-
port of services.

(d) Late reports. If the evidence of ex-
port report is not received by CCC
within the time period for filing, the
facility payment guarantee will be-
come null and void only if and only to
the extent that failure to make timely
filing resulted, or would likely result, in:
(1) Significant financial harm to
CCC;
(2) The undermining of an essential
regulatory purpose of the FGP;
(3) The obstruction of the fair admin-
istration of the FGP; or
§ 1493.290 Proof of entry.

(a) Diversion. The diversion of goods covered by a facility payment guarantee to a country other than that shown on the facility payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) Records of proof of entry. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the goods authorized by the facility payment guarantee. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include:

(1) For goods: An original certificate, signed by a duly authorized customs or port official of the emerging market, by the importer, by an agent or representative of the vessel or ship line which delivered the goods to the emerging market, or by a private surveyor in the emerging market, or other documentation deemed acceptable by CCC:

(i) Showing that the goods entered the emerging market;
(ii) Identifying the export carrier;
(iii) Describing the goods; and
(iv) Indicating date and place the goods were unloaded in the emerging market.

2. [Reserved]

§ 1493.300 Notice of default and claims for loss.

(a) Notice of default. If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter’s assignee must submit a notice of default to CCC as soon as possible, but not later than ten days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter’s assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the facility payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if approved by the Controller, CCC. The notice of default must include:

(1) Facility payment guarantee number;
(2) Name of the emerging market;
(3) Name of the defaulting bank;
(4) Payment due date;
(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
(6) Date of foreign bank’s refusal to pay, if applicable; and
(7) Reason for the foreign bank’s refusal to pay, if known.

(b) Filing a claim for loss. A claim for a loss by the exporter or the exporter’s assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Facility payment guarantee number;
(2) A certification that the scheduled payment has not been received;
(3) A certification of the amount of accrued interest in default, the date interest began to accrue and the interest rate on the foreign bank obligation applicable to the claim; and
(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter’s assignee that each page of each document is a true and correct copy:

(i)(A) The foreign bank’s letter of credit securing the export sale, and;
(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank’s letter of credit issued in favor of the exporter;

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed
Commodity Credit Corporation, USDA

§ 1493.310 Payment for loss.

(a) Determination of CCC’s liability. Upon receipt in good order of the information and documents required under §1493.300, CCC will determine whether or not a loss has occurred for which CCC is liable under the facility payment guarantee, this subpart, program announcement(s) and notice(s) to participants. If CCC determines that it is liable to the exporter or the exporter’s assignee, CCC will pay the exporter or the exporter’s assignee in accordance with paragraphs (b) and (c) of this section.

(b) Amount of CCC’s liability. CCC’s maximum liability for any claims for loss submitted with respect to any facility payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the facility payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the facility payment guarantee) of the exported value indicated in the evidence of export report (§1493.280(a)(7)), plus eligible interest.

(c) Late interest payment. If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter’s assignee beginning with the first day after the claim was found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) Accelerated payments. CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank’s letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank’s letter of credit issued in favor of the exporter, unless it is determined to be in the best interest of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter’s assignee in addition to such other claimed amount as may be due from CCC.

(e) Action against the assignee. Notwithstanding any other provision in this subpart to the contrary, with regard to the value of goods or services covered by a facility payment guarantee, CCC will not hold the assignee
§ 1493.320 Recovery of losses.

(a) Notification. Upon payment of loss to the exporter or the exporter’s assignee, CCC will notify the foreign bank of CCC’s rights under the subrogation agreement to recover all monies in default.

(b) Receipt of monies. (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter’s assignee from the importer, the foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 days from the date of recovery by the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the facility payment guarantee.

(c) Allocation of recoveries. Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter’s assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter’s assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a facility payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix to §1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

(d) Liabilities to CCC. Notwithstanding any other terms of the facility payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the facility payment guarantee or for fulfilling obligations under the FGP. Further, the exporter’s assignee may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter’s assignee engaged in fraud or otherwise violated program requirements.

(e) Good faith. The violation by an exporter of the certifications in §1493.270 or the failure of an exporter to comply with the provisions of §1493.280 or §1493.330(e) will not affect the validity
Commodity Credit Corporation, USDA

§ 1493.330

of any facility payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the facility payment guarantee or at the time of assignment of the facility payment guarantee.

(f) Cooperation in recoveries. Upon payment by CCC of a claim to the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will cooperate with CCC to effect recoveries from the foreign bank or the importer.

APPENDIX TO § 1493.320—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC’s policy, as set forth in § 1493.320, regarding pro rata sharing of recoveries made for claims filed under the FGP. For the purpose of this example only, even though CCC interest coverage is on a floating rate basis, a constant rate of interest is assumed. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement for the export sale of goods and services with the foreign bank calling for equal semi-annual payments of principal and semi-annual payment of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. Exported value reported to CCC equals $300,000.

3. The foreign bank fails to make the final principal payment of $50,000 and an interest payment of $2,493.15, both due on January 31.

4. On February 10, the U.S. bank files a notice of default and claim in good order with CCC.

5. CCC’s guarantee states that CCC’s maximum liability is limited to 95 percent of the principal amount due ($47,500) and interest at a rate of 8 percent per annum (basis 365 days) on 95 percent of the principal ($1,894.80).

6. CCC pays the claim on February 22.

7. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

COMPUTATION OF OBLIGATIONS

Using the above case, CCC’s payment to the holder of the facility payment guarantee would be computed as follows:

1. CCC’s Obligation under the Facility Payment Guarantee:
   - (a) Principal coverage—(95% × $50,000) ................. $47,500.00
   - (b) Interest coverage—(6% × $47,500 × 182/365) .......... 1,894.80

2. Foreign Bank’s Obligation under the Letter of Credit or the Related Obligation:
   - (a) Principal due January 31 .................................. 50,000.00
   - Interest due January 31 (10% × $50,000 × 182/365) .. 2,493.15
   - Amount owed by foreign bank as of January 31 .... 52,493.15
   - (b) Penalty interest due (12% per annum for 22 days × $50,000) .............. 361.64
   - (c) Amount owed by foreign bank as of February 22 .................................. 52,854.79

3. Amount of Foreign Bank’s Obligation Not Covered by CCC’s Payment Guarantee: 3,355.79

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party’s respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $52,854.79, CCC would be entitled to 93.65 percent ($49,499.00 divided by $52,854.79) and the holder of the facility payment guarantee would be entitled to 6.35 percent ($3,355.79 divided by $52,854.79) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.320(b) would apply.

§ 1493.330 Miscellaneous provisions.

(a) Assignment. (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a facility payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the facility payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment. Any assignment may be made to one party as agent or
trustee for two or more parties participating in the assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution and to the exporter issued the facility payment guarantee in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) Ineligibility of financial institutions to receive an assignment. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a facility payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) Alternative satisfaction of facility payment guarantees. CCC may, with the agreement of the exporter (or if the right to proceeds payable under the facility payment guarantee has been assigned, with the agreement of the exporter’s assignee), establish procedures, terms or conditions for the satisfaction of CCC’s obligations under a facility payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the facility payment guarantee and would not result in CCC paying more than the amount of CCC’s obligation.

(e) Maintenance of records and access to premises. (1) For a period of five years after the date of expiration of the coverage of a facility payment guarantee, the exporter or the exporter’s assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for goods or services exported in connection with a facility payment guarantee, including those records generated and maintained by agents, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter’s assignee, as applicable, during regular business hours from the effective date of the facility payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter’s, exporter’s assignee’s, or a related company’s books, records, and accounts concerning transactions relating to the facility payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, manufacturing, processing, and administrative and incidental costs, both normal and unforeseen.

(2) The exporter must maintain the proof of entry required by §1493.290(b), and must provide access to such document if requested by the Secretary of
Commodity Credit Corporation, USDA § 1493.400

Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) Responsibility of program participants. It is the responsibility of all program participants to review, and fully acquaint themselves with, this subpart, program announcement(s), and notice(s) to participants relating to the FGP, as applicable. Applicants for facility payment guarantees under this program are hereby on notice that they will be bound by any terms contained in applicable program announcement(s) or notice(s) to participants issued prior to the date of approval of a facility payment guarantee.

(g) Submission of documents by principal officers. All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters’ assignees under this subpart must be signed by a principal or officer of the exporter or exporter’s assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by:

(1) Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and

(2) The name and title of the authorized person or officer. Further, the exporter or exporter’s assignee must ensure that all information/reports required under this subpart are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter’s assignee. If acknowledgment of receipt is requested, the exporter or exporter’s assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter’s assignee must also submit a self-addressed courier service order which includes the recipient’s billing code for such service.

(h) Officials not to benefit. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the facility payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the facility payment guarantee if made with a corporation for its general benefit.

(i) Deadlines.

(1) Deadlines. (1) Where a deadline is fixed in terms of days, it means business days and excludes Saturdays, Sundays and federal holidays.

(2) Where a deadline is fixed in terms of months, the deadline falls on the same day of the month as the day triggering the deadline period, or if there is no same day, the last day of the month; and

(3) Where a deadline would otherwise fall on a Saturday, Sunday or federal holiday, the deadline shall be the next business day.

Subpart D—CCC Supplier Credit Guarantee Program Operations

SOURCE: 61 FR 33831, July 1, 1996, unless otherwise noted.

§ 1493.400 General statement.

(a) Overview. (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC’s guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange
§ 1493.410  Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the

will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter’s right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC’s guarantee coverage pertains. By approving an exporter’s application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer under the importer’s obligation.

(4) The SCGP payment guarantee is designed to protect the exporter or the exporter’s assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer’s obligation.

(c) Program administration. The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see §1493.410(c), “Contacts P/R”).
SCGP will have the following meanings:

(a) **Assignee.** A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) **CCC.** The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) **Contacts P/R.** A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) **Date of export.** One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) **Date of sale.** The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) **Discounts and allowances.** Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity’s value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) **Eligible interest.** The maximum amount of interest, based on the interest rate indicated in CCC’s payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter’s assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) **Exported value.** (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of
entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) Exporter. A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of §1493.420.

(j) FAS/USDA. The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) GSM. The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) Guaranteed value. The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC’s payment guarantee, as indicated on the face of the payment guarantee.

(m) Importer. A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) Importer obligation. A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) Incoterms. The following customary terms, as defined by the International Chamber of Commerce, Incoterms © current revision:

(1) Free Alongside Ship (FAS);
(2) Free on Board (FOB);
(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and
(4) Cost Insurance and Freight (CIF).

(p) Intervening purchaser. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) Late interest. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) Notice to participants. A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter’s application for such payment guarantee is approved.

(s) Payment guarantee. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter’s assignee in the event of a default by an importer under the importer obligation.

(t) Port value. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales,
Commodity Credit Corporation, USDA  § 1493.420

(1) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) Program announcement. An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) SCGP. The Supplier Credit Guarantee Program described by this subpart.

(w) United States or U.S. All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) U.S. agricultural commodity. (1) An agricultural commodity or product entirely produced in the United States; or (2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product.

For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(y) USDA. United States Department of Agriculture.


§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) Submission of documentation. In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant’s headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant’s participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: “I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred,
§ 1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;
(2) Name and address of the importer;
(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;
(4) Date of sale;
(5) Exporter's sale number;
(6) Delivery period as agreed between the exporter and the importer;
(7) A full description of the commodity (including packaging, if any);
(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;
(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;
(10) Description and value of discounts and allowances, if any;
(11) Port value (includes upward loading tolerance, if any);
(12) Guaranteed value;
(13) Guarantee fee;
(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;
(15) A statement indicating whether any portion of the export sale for
Commodity Credit Corporation, USDA

§ 1493.440 Certification requirements for payment guarantee.

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law.

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product.

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business.

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.450 Payment guarantee.

(a) CCC's obligation. The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation. unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) Period of guarantee coverage. The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) Terms of the CCC payment guarantee. The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) Final date to export. The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) Reserve coverage for loading tolerances. The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) Ineligible exports. Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) Foreign agricultural component. CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in §1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) Additional requirements. The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) Amendments. A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any
applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC’s liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter’s assignee are not viewed as amendments.)

§ 1493.460 Guarantee rates and fees.

(a) Guarantee fee rates. The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) Calculation of fee. The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) Payment of fee. The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter’s check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) Refunds of fee. Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC’s approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.470 Evidence of export.

(a) Report of export. The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number;

(2) Date of export;

(3) Exporter’s sale number;

(4) Exported value;

(5) Quantity;

(6) A full description of the commodity exported;

(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter’s application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;

(8) Description and value of discounts and allowances, if any;

(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter’s statement, “ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT” which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.480.

(b) Time limit for submission of evidence of export. The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is

989
§ 1493.480 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter’s sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in § 1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.


§ 1493.490 Proof of entry.

(a) Diversion. The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) Records of proof of entry. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)
§ 1493.500 Notice of default and claims for loss.

(a) Notice of default. If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

1. Payment guarantee number;
2. Name of the country;
3. Name of the defaulting importer;
4. Due date;
5. Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
6. Date of importer's refusal to pay, if applicable; and
7. Reason for importer's refusal to pay, if known.

(b) Filing a claim for loss. A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

1. Payment guarantee number;
2. A certification that the scheduled payment has not been received;
3. A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;
4. A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:
   i. The importer obligation;
   ii. Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the on-board ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;
   iii. (A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or
      (B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;
   iv. An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation;
   and
   v. A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) Subsequent claims for defaults on installments. If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.510 Payment for loss.

(a) Determination of CCC's liability. Upon receipt in good order of the information and documents required under §1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any
applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter’s assignee, CCC will pay the exporter or the exporter’s assignee in accordance with paragraphs (b) and (c) of this section.

(b) Amount of CCC’s liability. Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to §1493.450(a) of this part, CCC’s maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or
(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) Late interest payment. If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter’s assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) Accelerated payments. CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter’s assignee in addition to such other claims and amount as may be due from CCC.

(e) Action against the assignee. Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under §1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§1493.470 and 1493.480, excluding post-export adjustments (i.e., corrections to evidence of export reports); and
(2) The exporter or the exporter’s assignee furnishes the statements and documents specified in §1493.500.

§ 1493.520 Recovery of losses.

(a) Notification. Upon payment of loss to the exporter or the exporter’s assignee, CCC will notify the importer of CCC’s rights under the subrogation agreement to recover all moneys in default.

(b) Receipt of monies. (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter’s assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share
immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) Allocation of recoveries. Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter’s assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter’s assignee, and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to §1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) Liabilities to CCC. Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter’s assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter’s assignee has engaged in fraud or otherwise violated program requirements.

(e) Good faith. The violation by an exporter of the certifications in §§1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) Cooperation in recoveries. Upon payment by CCC of a claim to the exporter or the exporter’s assignee, the exporter or the exporter’s assignee will cooperate with CCC to effect recoveries from the importer.

APPENDIX A TO §1493.520—I LLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC’s policy, as set forth in §1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a $200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 369 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of $100,000 and an interest payment of $2,500.00 (10% per annum for 90 days on $100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC’s guarantee states that CCC’s maximum liability is limited to 60 percent of the principal amount due ($60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding ($1,183.56) (8% per annum for 90 days on $60,000). (CCC’s basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of non-payment by CCC (January 31) is 7 percent. (CCC’s late interest rate.)

COMPUTATION OF OBLIGATIONS

Using the above case, CCC’s payment to the holder of the payment guarantee would be computed as follows:
1. CCC’s Obligation under the Payment Guarantee:
   (a) Principal coverage—(60% of $100,000) .......... $60,000.00
   (b) Interest coverage—(8% per annum for 90 days on $60,000, basis 365 days) .............. 1,183.56
       ........................................ $61,183.56
   (c) Late interest due from CCC (7% per annum for 11 days on $61,183.56, basis 365 days) ........ 129.07
   (d) Amount paid by CCC on February 22 .................. $61,312.63

2. Importer’s obligation under the importer obligation:
   (a) Principal due January 31 .................. $100,000.00
   Interest due January 31
      (10% per annum for 90 days on $100,000, basis 360 days) .......... 2,500.00
   Amount owed by importer as of January 31 .......... $102,500.00
   (b) Penalty interest due (12% per annum for 22 days on $102,500.00, basis 360 days) .......... 751.67
   (c) Amount owed by importer as of February 22 ........ $103,251.67

3. Amount of importer’s obligation not covered by CCC’s payment guarantee:
   $41,039.04 ($103,251.67–$61,312.63).

**COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES**

In establishing each party’s respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is $103,251.67, CCC would be entitled to 59.38 percent ($61,312.63 divided by $103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent ($41,039.04 divided by $103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, §1493.520(b) would apply.

**§ 1493.530 Miscellaneous provisions.**

(a) Assignment. (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:
   (i) Made to one party acting for two or more parties; or
   (ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) Ineligibility of financial institutions to receive an assignment. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.
(c) Ineligibility of financial institutions to receive proceeds. A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;
(2) Owns or controls the entity issuing the importer obligation; or
(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) Alternative satisfaction of payment guarantees. CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter’s assignee), establish procedures, terms and/or conditions for the satisfaction of CCC’s obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC’s obligation.

(e) Maintenance of records and access to premises. (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter’s assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter’s assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter’s, exporter’s assignee’s, agent’s, intervening purchaser’s, or related company’s books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter’s assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by §1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) Responsibility of program participants. It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) Submission of documents by principal officers. All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters’ assignees under this subpart must be signed by a principal or officer of the exporter or exporter’s assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Word indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority;
and the name and title of the authorized person or officer. Further, the exporter or exporter’s assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter’s assignee. If acknowledgment of receipt is requested, the exporter or exporter’s assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter’s assignee must also submit a self-addressed courier service order which includes the recipient’s billing code for such service.

(h) Officials not to benefit. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) OMB control number assigned pursuant to the Paperwork Reduction Act. The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0037.

PART 1494—EXPORT BONUS PROGRAMS

Subpart A—Export Enhancement Program Criteria

Sec.
1494.10 General statement.
1494.20 Criteria.

Subpart B—Export Enhancement Program Operations

1494.101 General statement.
1494.201 Definitions of terms.
1494.301 Information required for program participation.
1494.401 Performance security.
1494.501 Submission of offers to CCC.
1494.601 Acceptance of offers by CCC.
1494.701 Payment of bonus.
The expected contribution of proposed initiatives in furthering trade policy negotiations and, in particular, in furthering the U.S. trade policy negotiating strategy of countering competitors' subsidies and other unfair trade practices by displacing such countries' subsidized exports in targeted countries;

(b) The contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. agricultural commodities;

(c) The effect that sales facilitated by initiatives would have on non-subsidizing exporters of agricultural products; and

(d) The subsidy requirements of proposed initiatives compared to the expected benefits.

Subpart B—Export Enhancement Program Operations


§ 1494.101 General statement.

This subpart contains the regulations governing the operation of the Export Enhancement Program (EEP) of the Commodity Credit Corporation (CCC). CCC will, from time to time, announce, through public press release, initiatives to facilitate the export of U.S. agricultural commodities to targeted markets. The public press release, which will contain the name of a person for interested parties to contact, will be followed by the issuance of an Invitation for Offers (Invitation). Invitations will be issued pursuant to this subpart by the General Sales Manager (GSM) and will specify the eligible country(ies) (the targeted market), the unit of measure, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity (including possible restrictions on type, kind, grade and/or class or other quality specifications), the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation. Invitations may be one of the following two types: Those inviting exporters which have a sales contract with an eligible buyer to submit a competitive offer for a CCC Bonus; and those inviting exporters which have a sales contract with an eligible buyer to apply for an Announced CCC Bonus. After an interested person has qualified to submit an offer for an eligible commodity, the eligible exporter may submit an offer to CCC in response to an Invitation. Such offer must contain the information required by this subpart and any additional information required by the applicable Invitation. The exporter’s offer will include either the Announced CCC Bonus, if applicable, or an amount in dollars and cents for a bonus deemed necessary by the exporter to make a commercial sale of the eligible commodity for export to the eligible country competitive with export sales of the commodity by other exporting countries to buyers in the eligible country. If the exporter has furnished the required performance security and the offer is acceptable to CCC, then CCC will notify the exporter that its offer has been accepted. CCC and the exporter will enter into an Agreement in which CCC will agree to pay the bonus to the exporter in return for the exporter’s submission of proof that the eligible commodity has been exported from the United States and entered into the eligible country, in accordance with the terms and conditions of the Agreement.

§ 1494.201 Definitions of terms.

Terms used in this subpart, Invitations issued pursuant to this subpart, and any documents pertaining to the EEP shall have the following meaning, unless otherwise specified in such Invitations or documents:

(a) Agreement or EEP Agreement—The Agreement entered into between CCC and the exporter consisting of:

(1) The terms and conditions of this subpart;
(2) The terms and conditions of the applicable Invitation;
(3) The exporter’s offer;
(4) CCC’s acceptance of the exporter’s offer; and
(5) The public press release for the Announced CCC Bonus in effect at the time of the offer, if applicable.

(b) Announced CCC bonus—A CCC bonus announced by CCC by public press release in connection with an Invitation which specifies that the CCC bonus amount will be pre-determined and announced by CCC.

(c) FSA—The Farm Service Agency, U.S. Department of Agriculture.

(d) Bonus value—The CCC bonus multiplied by the quantity of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country. (The bonus value is paid to the exporter in CCC certificates or other form of payment.)

(e) Business day—Days during which employees of the U.S. Department of Agriculture in Washington, DC or in Kansas City, Missouri, as applicable depending upon the office to which a submission is to be made, are on official duty during normal business hours.

(f) CCC—The Commodity Credit Corporation, U.S. Department of Agriculture.

(g) CCC Bonus—A dollar and cents amount, established through CCC’s acceptance of the exporter’s offer for such bonus amount, to be paid to the exporter for each unit of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country.

(h) CCC Certificate—The CCC Commodity Certificate or Certificates issued by CCC that may be transferred or exchanged for a CCC-owned commodity pursuant to CCC’s regulations on Commodity Certificates, In Kind Payments, and Other Forms of Payment, currently codified at 7 CFR part 1470.

(i) CCC Operations Division (CCCOD)—The CCC Operations Division, FAS, U.S. Department of Agriculture.

(j) Date of entry—Either the date on the certificate of entry specified in §1494.401(f)(2) indicating that the eligible commodity entered the eligible country on that date or the date that an entry document was issued by a customs port authority or other government official, whichever is later.

(k) Date of export—One of the following dates, depending upon the method of shipment:

(1) The on-board date shown on the export carrier’s bill of lading, when the eligible commodity is shipped from the U.S., without being transshipped through a Canadian port;

(2) The on-board date at the Canadian port shown on the export carrier’s bill of lading, when the eligible commodity is shipped from a Canadian transshipment port on the St. Lawrence River, provided its identity had been preserved until shipped from Canada;

(3) The on-board date shown on the export carrier’s bill of lading, when the eligible commodity is loaded to a lash barge for shipment from the U.S.; or

(4) The date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the eligible country, when the eligible commodity is shipped by rail or truck from the U.S.

(1) Date of sale—The earliest date the exporter has knowledge that a sales contract, as defined in paragraph (bb) of this section, exists with an eligible buyer.

(m) Director—The Director, Kansas City Commodity Office, FSA, U.S. Department of Agriculture, or the Director’s designee.

(n) Eligible Buyer—Unless otherwise specified in the Invitation, a buyer, located in the eligible country, that has entered, or will enter, into a sales contract with an exporter. (The applicable Invitation may limit the eligible buyer to one or more particular buyers in an eligible country.)

(o) Eligible country—The country or countries, as specified in an Invitation, which will be the only country or countries into which an exported eligible commodity must ultimately be entered in order for the exporter to earn a bonus from CCC under that Invitation.

(p) Eligible commodity—The U.S. agricultural commodity specified as eligible for export under the applicable Invitation, which is of the kind, type, grade and/or class of commodity specified in the applicable Invitation. (If the eligible commodity is grain, it must meet the definition applicable for that grain under the U.S. Grain Standards
Commodity Credit Corporation, USDA

§ 1494.201

Act and the regulations issued thereunder.)

(q) Eligible exporter. A person that has been notified by CCC that such person is qualified to submit offers in response to Invitations.

(r) Export or exported—The shipment of the eligible commodity from the United States or from the Canadian transshipment port, as permitted by this subpart, destined for the eligible country.

(s) Exporter—An eligible exporter that enters into an Agreement with CCC under this subpart.

(t) Export carrier—The carrier on which the eligible commodity is shipped under the Agreement to the eligible country or to a port in a nearby country, if transshipments other than through Canada are allowed by the applicable Invitation. (“Export carrier” may mean an ocean vessel and, on Canadian transshipments, will mean the ocean vessel loaded at the Canadian transshipment port; or, on overland shipments, a railcar or truck; or a container or lash barge loaded with the eligible commodity for which a through on-board bill of lading is issued aboard an ocean vessel.)

(u) FAS—The Foreign Agricultural Service, U.S. Department of Agriculture.

(v) GSM—The General Sales Manager, FAS, U.S. Department of Agriculture, acting in the capacity of Vice President, CCC, or the GSM’s designee.

(w) Invitation—The Invitation for Offers issued by CCC pursuant to this subpart, generally specifying the eligible country, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity, the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, allowances for transshipments, and any other terms and conditions particular to that Invitation. (If the Invitation contains terms or conditions that are inconsistent with this subpart, the terms and conditions of the Invitation will prevail for the purposes of Agreements entered into pursuant to such Invitation.)

(x) Notice to exporters—EEP Contacts—A notice issued by FAS by public press release which contains specific addresses; telephone, facsimile and telex numbers; and contacts within FAS and FSA to obtain further information concerning qualification as an eligible exporter, the submission of offers in response to Invitations, amendments to Agreements, requests for bonus payments, the submission of export and entry documentation, and other matters related to the EEP.

(y) Official Inspection Certificate—A valid official export inspection or other quality analysis certificate, as specified in the applicable Invitation.

(z) Official weight certificate—A valid official export weight or other quantity certificate, as specified in the applicable Invitation.

(aa) Person—An individual, partnership, corporation, association or other legal entity.

(bb) Sales contract—The sales contract entered into between an eligible exporter and an eligible buyer which sets forth the terms and conditions of a sale of the eligible commodity from the eligible exporter to the buyer. (Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.)

(cc) Transshipment—The entry of the eligible commodity into a country other than the eligible country which occurs prior to the subsequent entry of the eligible commodity into the eligible country.

(dd) Time—All references to time shall refer to local time in Washington, DC.
§ 1494.301 Information required for program participation.

Before CCC will consider an offer from an interested person, such person must qualify for participation in the program. Based upon information submitted by the interested person and available from public sources, CCC will determine whether the interested person is eligible for participation in the program.

(a) Submission of documentation. An interested person that wishes to qualify as an eligible exporter must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) The address of the interested person’s office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the interested person, if the interested person is a corporation;

(4) The name and address of an office(s) of the interested person within the U.S., if the interested person is a foreign corporation or other foreign entity; and

(5) A certified statement describing the interested person’s participation, if any, during the past three years in U.S. Government programs, contracts or agreements.

(b) Necessity to qualify. An interested person may not submit an offer, and CCC will not consider any such offer, until CCC has notified the interested person that such person has qualified as an eligible exporter.

(c) Additional submissions. CCC will promptly notify interested persons that have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC’s decision and will be given an opportunity to provide additional information for consideration by CCC.

(d) Previous performance. CCC may request additional information with respect to the interested person’s performance under any U.S. Government programs or in connection with any contracts or agreements with the U.S. Government during the past three years.
Commodity Credit Corporation, USDA

§ 1494.401 Performance security.

(a) Requirement to establish performance security. Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which is acceptable to CCC, in order to guarantee the eligible exporter’s faithful performance of the Agreement. If CCC enters into an Agreement with the eligible exporter, this performance security must remain in effect until its cancellation or reduction is authorized by CCC pursuant to paragraph (f) of this section. An offer made by an eligible exporter will not be considered if proof of the establishment of the performance security is not made available to CCC by 3 p.m. on the date for which the offer is submitted for consideration.

(b) Form of performance security. The performance security must be acceptable to CCC and may be an irrevocable standby letter of credit, a bond, or a certified or cashier’s check. If a standby letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the standby letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a bond is furnished as performance security, the surety(ies) must be among those appearing on the list of approved sureties maintained by the U.S. Department of the Treasury. If a cashier’s or certified check is furnished as performance security, the bank issuing the cashier’s or certified check must be a U.S. bank.

(c) Amount of performance security. The amount of the performance security to be furnished to CCC in response to a particular Invitation will depend upon whether the eligible exporter intends to select “Option A” or “Option B” for the timing of the bonus payment. If the eligible exporter furnishes performance security under “Option A” of the applicable Invitation, the eligible exporter may request payment of the bonus after export of the eligible commodity but before entry of the commodity into the eligible country. If the eligible exporter furnishes performance security under “Option B” of the applicable Invitation, the eligible exporter may request payment of the
bonus only after the exported eligible commodity has entered into the eligible country. The applicable Invitation will specify the exact amount of performance security for the eligible commodity required under either “Option A” or “Option B” and the method and rate for determining liquidated damages. After the exporter and CCC enter into an Agreement, the exporter may request CCC to change the performance security option for an entire Agreement from “Option B” to “Option A” and, if CCC agrees to this change, the exporter will increase the performance security amount to the level required by the applicable Invitation for “Option A”.

(d) Additional security. The exporter shall promptly furnish such additional security as CCC may determine is necessary to protect CCC under an Agreement if the surety(ies) or obligating bank:

(1) Becomes unacceptable to the U.S. Government or CCC; and/or
(2) Fails to furnish reports on its financial condition as required by the U.S. Government or CCC.

(e) Right to funds under the performance security. If CCC enters into an Agreement with an exporter under the EEP, CCC will have the right to funds from the performance security established by the exporter for such Agreement to recover:

(1) The amount of any bonus paid to the exporter under the Agreement if the exporter fails to perform in accordance with such Agreement;
(2) Any funds owed by the exporter to CCC related to the specific EEP Agreement for which the performance security was established, including those for liquidated damages, discounts for late performance, overpayments made by CCC, storage charges, or other damages or charges as determined by CCC; and/or
(3) Any amounts or funds that could be owed by the exporter to CCC in accordance with subparagraphs (e)(1) and (2) of this section for unfulfilled obligations under the Agreement if the performance security should expire prior to the exporter's fulfillment of these obligations. Should the exporter fulfill these obligations, in accordance with the Agreement, after CCC has drawn upon the performance security, CCC will return the funds drawn to the exporter or other appropriate party, as determined by CCC. CCC may return the performance security if it determines that the exporter is not liable for any damages incurred by CCC as a result of the exporter's failure to fulfill its obligations under the Agreement and that the exporter will not retain any bonus payment which was not earned.

(f) Cancellation or reduction of performance security. (1) CCC will agree, upon request by the exporter, to a cancellation of the performance security established for an Agreement when CCC determines, on the basis of evidence provided by the exporter or other evidence available to CCC, that:

(i) The exporter has fully performed under the Agreement;
(ii) The exporter has fully compensated CCC for all costs incurred or damages suffered by CCC, unless CCC has determined to hold the exporter harmless for such damages pursuant to §1494.801(d) as a result of the exporter's nonperformance of the Agreement; or
(iii) It is no longer in the best interest of the EEP to require the exporter to maintain the performance security, and the exporter submits to CCC a written statement agreeing that all other terms and conditions of the Agreement will remain unchanged pending final resolution of the exporter's liabilities to CCC.
(2) To support a request for the cancellation of performance security furnished in connection with an Agreement, the exporter must provide to CCC evidence of the export of the eligible commodity as provided by §1494.701(c), and the entry of the eligible commodity into the eligible country or countries. The entry certification must be in English or accompanied by a certified or other translation acceptable to CCC. To show entry of the eligible commodity into the eligible country, the exporter must furnish to CCC an original certification signed by a duly authorized customs or port official of the eligible country, by the eligible buyer, by an agent or representative of the vessel or shipline which delivered the eligible commodity to the eligible country, or by a private
surveyor in the target country or other documentation deemed acceptable by the GSM showing:

(i) That the eligible commodity entered the eligible country;
(ii) The identification of the export carrier;
(iii) The quantity of the eligible commodity unloaded;
(iv) The kind, type, grade and/or class of the eligible commodity; and
(v) The date(s) and place(s) of unloading of the eligible commodity in the eligible country.

(3) If the exporter makes multiple shipments against a sales contract with an eligible buyer, CCC may agree to a proportional reduction in the amount of the required performance security when the exporter has furnished evidence that the exporter has performed under the Agreement with respect to a particular shipment.

(4) Upon the payment of liquidated damages by an exporter to CCC under a specific Agreement or the determination by CCC, pursuant to §1494.801(d), to hold the exporter harmless for the payment of liquidated damages owed to CCC under a specific Agreement, CCC will allow the exporter to cancel or reassign that portion of the performance security opened for such specific Agreement that would relate to the value of the liquidated damages.

§ 1494.501 Submission of offers to CCC.

(a) Consideration of offers. Unless otherwise specified in the Invitation, CCC will consider offers on a daily basis from the date of issuance of the Invitation until such time that CCC announces that offers will no longer be accepted under the Invitation, the total quantity of the eligible commodity announced in the Invitation has been awarded, or the Invitation has expired as indicated by the expiration date shown in the Invitation.

(1) Prior to the submission of an offer to CCC, the eligible exporter must have entered into a sales contract, as defined in §1494.201(bb), with an eligible buyer for the export sale and the delivery of the eligible commodity to the eligible country.

(2) The date of sale of the eligible exporter’s sales contract with an eligible buyer must be after the issuance date of the applicable Invitation.

(3) The sales contract between the eligible exporter and an eligible buyer may be conditioned upon the eligible exporter’s entering into an Agreement with CCC under the EEP for the payment of a bonus.

(4) CCC will not be responsible to any person for any loss caused by the failure of the eligible exporter to obtain a CCC bonus.

(5) The eligible exporter must promptly notify CCC in writing of any amendment to the sales contract with an eligible buyer.

(b) Submission of offers. Eligible exporters must submit offers, or modifications or withdrawals thereof, to the address, telephone, telex or facsimile numbers specified in the Notice to Exporters—Contacts for EEP. Telephonic offers must be confirmed in writing immediately thereafter by telex or facsimile. If a telephonic offer is not confirmed in writing by 9 a.m. on the next business day, the offer will not be considered. The date and time affixed to submissions will be as determined by CCC.

(c) Content of offers. Offers to CCC for a CCC bonus under the EEP must contain the information shown below in the same numerical order as shown below. CCC reserves the right to reject any offer that so materially departs from this prescribed format that its consideration would hinder the offer review process. The applicable Invitation may require the submission of further information necessary for the consideration of an offer.

(1) The use of the numerical designation assigned to the applicable Invitation, which shall signify that the offer is submitted subject to all the terms and conditions of this subpart and the Invitation in response to which the offer is being submitted for consideration by CCC.

(2) The date and time for which the offer is submitted for consideration. The time shall be stated as “after 3 p.m.” For example, the information required by paragraphs (c)(1) and (c)(2) of this section could be stated as follows: “Invitation No. GSM-500–1, Revision No. X. For Consideration After 3 p.m. on August 1, 1991.”
§ 1494.501

(3) The full business name and address of the eligible exporter making the offer.

(4) The name and title of the individual signing the offer.

(5) The telephone number and telex or facsimile number of the eligible exporter submitting the offer.

(6) The CCC bonus in dollar and cents requested by the eligible exporter for each unit of measure of the eligible commodity to be exported to the eligible country. The offer shall contain only one CCC bonus. In offers submitted in response to an Invitation in which CCC has announced the bonus amount, the eligible exporter shall state the dollar and cents amount of the Announced CCC Bonus.

(7) The quantity, on a net weight basis, (less any dockage, if applicable) of the eligible commodity for which the eligible exporter wishes to receive a CCC bonus pursuant to an EEP Agreement. This quantity shall be exclusive of tolerances and expressed in the unit of measure specified in the applicable Invitation. This quantity may be less than the sales contract quantity.

(8) The U.S. coast of export. The Invitation may require the eligible exporter to indicate: The coasts of export if more than one coast of export is allowed for an offer; the Canadian port if the eligible commodity is to be transshipped through a Canadian port on the St. Lawrence River; or the U.S. city and state from which the shipments will cross the border into the eligible country if the eligible commodity is to be shipped by rail or truck.

(9) The quality of the eligible commodity to be exported to the eligible country, if required by the applicable Invitation, including any additional quality specifications not found in the Invitation but included in the tender specifications by the eligible buyer or the sales contract with the eligible buyer. The Invitation may limit an offer to one or more quality designations for the eligible commodity.

(10) The names of the eligible buyer and the eligible country. Unless otherwise provided for in the applicable Invitation, an offer shall contain only one eligible buyer and one eligible country. The Invitation may also provide that the eligible buyer need not necessarily be located in the eligible country.

(11) The date of sale of the sales contract with the eligible buyer.

(12) The number assigned by the eligible exporter to the sales contract.

(13) The quantity of the eligible commodity specified in the sales contract, expressed in the unit of measure specified in the applicable Invitation.

(14) The sales contract loading tolerance, if any, expressed in a percentage.

(15) The sales contract unit price, delivery terms (e.g., FOB, C&F, etc.); the nature of any arrangements or understandings of the eligible exporter and any other person that would affect the sales contract, including but not limited to arrangements or understandings concerning commissions, rebates, and other payments if applicable; credit payment terms (e.g., GSM-102, GSM-103, or other credit arrangements); and, if required by the applicable Invitation, the discharge port. The possible credit payment terms referenced in an offer are for CCC’s information only and are not to be construed as a contingency for consideration or acceptance. The eligible exporter is fully responsible for the arrangement of such payment terms independently from the EEP offer and CCC bears no responsibility if such credit payment terms cannot be secured.

(16) The delivery period specified in the sales contract expressed on the basis of either shipment from the United States or the Canadian transshipment port or arrival in the eligible country. If an arrival period is shown, the offer must also indicate an anticipated shipment period. If a multiple month delivery schedule is agreed upon in the sales contract the offer must specify the quantity of the eligible commodity to be delivered each month or at other specified intervals.

(17) Any options which may be exercised by the eligible buyer under the sales contract. If the offer is accepted by CCC, the exporter must immediately inform CCC if any such options are exercised by the buyer.

(18) The name and address of the sales agent, if any, for the sales contract.
(19) The designation of bonus payment under “Option A” or “Option B,” as described in §1494.401(c).

(20) The words “ALL ITEM 20 CERTIFICATIONS ARE BEING MADE IN THIS OFFER” which, when included in the offer by the eligible exporter, will indicate that the eligible exporter is certifying that:

(i) The information furnished to CCC with respect to the sales contract is correct;

(ii) The date of sale with an eligible buyer was after the issuance date of the applicable invitation;

(iii) The sale does not replace any sale made to the eligible buyer by the eligible exporter, or any affiliate or subsidiary of the eligible exporter, prior to the issuance date of the applicable invitation;

(iv) There are no other arrangements or understandings between the eligible exporter and any other person that would alter the information provided under paragraph (c) of this section;

(v) There were and will be no corrupt payments or extra sales services, or items extraneous to the export sale provided in connection with the export sale, and the transaction complied with applicable U.S. law;

(vi) The CCC bonus requested in the offer has been arrived at independently, without any consultation, communication, or agreement with any other eligible exporter or competitor relating to:

(A) The amount of the CCC bonus;

(B) The intention to submit an offer; or

(C) The methods or factors used to calculate the CCC bonus requested;

(vii) The CCC bonus requested in the offer has not been and will not knowingly be disclosed by the eligible exporter, directly or indirectly, to any other eligible exporter or competitor before the time the offer is to be considered by CCC, unless otherwise required by law;

(viii) No attempt has been made, or will be made, by the eligible exporter to induce any other concern to submit, or not to submit, an offer for the purpose of restricting competition;

(ix) The signatory of the offer:

(A) Is the person in the eligible exporter’s organization responsible for determining the CCC bonus being requested and has not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section; or

(B) Has been authorized in writing to act as agent for the eligible exporter for the purposes of paragraphs (b) and (c) of this section and certifies that the eligible exporter named in the offer and the signatory have not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section;

(x) If the eligible commodity is vegetable oil or a vegetable oil product, that none of the eligible commodity has been or will be used as the basis of a claim of a refund, as drawback, pursuant to Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(xi) The agricultural commodity or product to be exported under an EEP Agreement is a U.S. agricultural commodity as defined by §1494.201(gg).

(xii) The eligible exporter is providing the assurances required by §§15.4 and 15b.5 of this title (7 CFR part 15 relates to various non-discrimination provisions);

(xiii) The eligible exporter still meets all of the qualification and program eligibility requirements of §1494.301 and will immediately notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements; and

(xiv) The eligible exporter is providing any other certification required by the applicable invitation.

Any eligible exporter which is unable to make the certifications specified in this subparagraph (c)(20) must provide a written statement to that effect to CCC and may include any explanation or any additional information for the consideration of CCC. CCC will reject an offer if the eligible exporter states that it is unable to provide the required certifications, unless CCC determines that acceptance of the offer would be in the best interests of the EEP.

(d) Conditional offers. Any qualification or condition in, or added to, the offer and not expressly authorized by
§ 1494.601 Acceptance of offers by CCC.

(a) Establishment of acceptable sales prices and CCC bonuses. For each Invitation, CCC will establish sales prices for the eligible commodity and CCC bonus amounts which would be acceptable to CCC in terms of furthering the objectives of the EEP.

(1) In establishing acceptable sales prices for the eligible commodity, CCC will consider available relevant market data.

(2) In determining acceptable CCC bonus amounts, CCC may take into consideration factors such as, but not limited to, the following: The prevailing domestic market price of the eligible commodity; the price of the same agricultural commodity exported by other exporting countries to the eligible country; ocean freight rates for the export of the eligible commodity from the U.S. and other exporting countries to the eligible country; the particular preferences or purchasing practices of buyers in the eligible country which would customarily affect the acceptability of the eligible commodity relative to that of competing exports of the same agricultural commodity to the eligible country from other exporting countries; and the cost effectiveness of the payment of a CCC bonus amount in view of CCC’s obligation to maximize the use of resources available for the operation of the EEP.

(3) The acceptable sales prices and bonus amounts will be modified by CCC as necessary to take advantage of updated information that becomes available to CCC.

(b) Acceptance of offers for a CCC bonus on a competitive basis. An offer from an eligible exporter for a CCC bonus on a competitive bonus that meets all of the requirements of this subpart will first be reviewed to determine if the offer contains an acceptable sales price. If the sales price contained in the offer is found to be acceptable, then the CCC bonus contained in the offer will be reviewed to determine if the CCC bonus requested is found to be acceptable. Offers with acceptable sales prices and acceptable CCC bonuses will be accepted under each Invitation beginning with the offer having the lowest CCC bonus amount, subject to the limitations in paragraphs (f) and (h) of this section.

(c) Acceptance of offers for an announced CCC bonus. Offers from eligible exporters for an Announced CCC Bonus that meet all of the requirements of this subpart and which contain an acceptable sales price will be accepted under each Invitation on a first-come, first-served basis according to the time of receipt of the offer, as determined by CCC, subject to the limitations in paragraphs (f) and (h) of this section.

(d) Notification of acceptance of offers. CCC will notify an eligible exporter by telephone of the acceptance or rejection of its offer as soon as possible after review of the exporter’s offer by CCC but not later than 10 a.m. of the next business day after the date the offer was submitted for consideration. If an offer is rejected, CCC will notify the eligible exporter of the basis for the rejection. Acceptance of offers will be confirmed in writing. The date of the telephonic notification of acceptance by CCC of the eligible exporter’s offer will be the effective date of the exporter’s Agreement with CCC.

(e) Announcement of acceptance of offers. CCC will generally announce the
acceptance of offers by public press release as soon as possible after the notification to the exporter. The announcement will generally include the eligible commodity, the eligible country, the exporter, the delivery period, the CCC bonus, and, if applicable, the class of the eligible commodity.

(f) Limitation on acceptance of offers. The total quantity of the eligible commodity, exclusive of tolerances, to be exported under all offers that are accepted by CCC pursuant to a particular Invitation will not be greater than the total quantity of the eligible commodity stated in such Invitation. CCC may refuse to accept further offers under an applicable Invitation if the quantity of the eligible commodity, exclusive of tolerances, already accepted totals the quantity, exclusive of tolerances, that is being tendered for by the eligible buyer, even though such quantity may be less than the total quantity available under that Invitation.

(g) Rejection of offers. Any offer or part of an offer submitted for consideration that is not accepted by CCC by 10 a.m. of the next business day after the date for which the offer was submitted for consideration will be deemed to have been rejected.

(h) CCC’s right of rejection. Notwithstanding any other provisions of this subpart, CCC reserves the right to reject any or all offers submitted for consideration on a particular day, including those offers that have acceptable sales prices and CCC bonus amounts.

§ 1494.701 Payment of bonus.

(a) Forms of bonus. The bonus may be paid to the exporter in CCC Certificates or in any other form specified in the applicable Invitation which CCC determines to be appropriate.

(b) Quantity on which bonus is paid. The quantity of the eligible commodity exported from the U.S. which is eligible for the payment of a CCC bonus is the net weight (less any dockage, if applicable) or count which is established by the Official Inspection Certificate, the Official Weight Certificate or the export bill of lading, whichever is less. If the exporter has furnished performance security under “Option A” of the applicable Invitation and wishes the bonus to be paid prior to the entry of the eligible commodity into the eligible country, this quantity will be used in calculating the bonus value for the purposes of making payment to the exporter. If the exporter is not paid the bonus until the commodity enters into the eligible country, then this quantity will also be used in calculating the bonus value for the purposes of making payment to the exporter, unless in the determination of CCC, there is evidence to suggest that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country. The payment of a bonus value to an exporter does not indicate that the bonus has been earned by the exporter under the Agreement; pursuant to §1494.801(a)(3), the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement and the exporter submits proof of such entry to CCC.

(c) Request for bonus payment under “Option A.” If the exporter has furnished performance security under “Option A” of the applicable Invitation and wishes the bonus to be paid after export of the eligible commodity, the exporter must, within 30 calendar days after the date of export of the eligible commodity, furnish to the Director, at the address referenced in the Notice to Exporters—Contacts for EEP, a written request for payment of the bonus. All documents submitted to support such a request must be acceptable to the Director.

(1) To support each bonus payment request, the exporter must furnish to the Director the following:

(i) The original or an original copy of the on-board bill of lading issued for the export carrier and signed by an agent of the export carrier. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) An on-board date; and

(E) That the eligible commodity is destined for the eligible country.

(ii) The original or an original copy of the Official Weight Certificate, as required in the applicable Invitation. The certificate must show:
§ 1494.701  

(A) The identification of the export carrier, if known at the time of issuance;  

(B) The date and place of issuance;  

and  

(C) The weight or count of the eligible commodity.  

(iii) The original or an original copy of the Official Inspection Certificate, as required in the applicable Invitation. The certificate must show:  

(A) The identification of the export carrier, if known at the time of issuance;  

(B) The date and place of issuance;  

(C) The quantity of the eligible commodity to which the certificate relates; and  

(D) The quality description of the eligible commodity.  

(iv) If the documents submitted under paragraphs (c)(1)(ii) and (iii) of this section do not specify the export carrier, the exporter must also submit a signed certification that the commodity represented by the Official Inspection and/or the Official Weight certificates is the identical eligible commodity represented on the export bill of lading.  

(2) If the export of the eligible commodity was by lash barge, the exporter must furnish, in addition to the documents required by paragraph (c)(1) of this section, a statement from the vessel’s agent showing that the lash barge was loaded to the lash vessel named in the on-board lash bill of lading and that the eligible commodity is destined for the eligible country.  

(3) If the export of the eligible commodity was from a Canadian transshipment port on the St. Lawrence River, the exporter must furnish to the Director the following, in addition to the documents required by paragraph (c)(1) of this section:  

(i) Documentary evidence covering the movement of the eligible commodity from the United States to the export carrier described in the on-board bill of lading issued at the Canadian transshipment port and showing the information provided in paragraphs (c)(1) and, if applicable, (c)(2) of this section; and  

(ii) A certification that the eligible commodity exported is the identical eligible commodity that was shipped from the United States.  

(4) If the export of the eligible commodity was by railcar or truck, the exporter must furnish to the Director the following, in addition to the documents required by paragraphs (c)(1)(ii) and (iii) of this section:  

(i) The authenticated landing certificate or similar document issued by the government of the eligible country; and  

(ii) The original or an original copy of the bill of lading issued at the point of loading the railcar or truck. The bill of lading must show:  

(A) The identification of the export carrier;  

(B) The date and place of issuance;  

(C) The quantity of the eligible commodity;  

(D) The date that the railcar or truck was loaded; and  

(E) That the eligible commodity is destined for the eligible country.  

(d) Request for bonus payment under “Option B.” If the exporter has furnished performance security under “Option B” of the applicable Invitation and wishes the bonus to be paid after the entry of the exported eligible commodity into the eligible country, the exporter must, within 60 calendar days after the date of entry of the eligible commodity into the eligible country, furnish to the Director at the address referenced in the Notice to Exporters—Contracts for EEP, a written request for payment of the bonus. To support each request, the exporter must furnish to the Director, in a form acceptable to the Director, the documents specified in paragraph (c) of this section, as applicable, along with the certification of entry specified in §1494.401(f)(2).  

(e) Time frame for payment of a bonus. CCC will endeavor to pay the bonus to the exporter within 10 business days after CCC determines that the documents supporting the bonus request are acceptable.  

(f) Certificate amount. If CCC decides to pay the bonus in the form of a CCC Certificate(s), the dollar value of the certificate(s) issued to the exporter will be determined by multiplying the CCC bonus specified in the Agreement by the net quantity of the eligible commodity on which the bonus is to be
paid, as specified in paragraph (b) of this section, less any dockage if applicable.

(g) Late requests for bonus payment. If CCC decides to pay the bonus in the form of a CCC Certificate(s) and the exporter fails to request issuance of the certificate(s) within 30 calendar days after the date of export of the eligible commodity, if the exporter has chosen performance security “Option A,” or within 60 days after the entry of the eligible commodity into the eligible country, if the exporter has chosen performance security “Option B,” CCC may, upon issuing the certificate(s), discount the certificate(s) in an amount determined appropriate by CCC to compensate it for costs which may be incurred by CCC as a result of the exporter’s delay.

§ 1494.801 Enforcement and termination of agreements with CCC.

(a) Performance in accordance with an Agreement with CCC. (1) An exporter which enters into an Agreement with CCC must ensure that the eligible commodity is exported from the U.S. and enters the eligible country in accordance with the terms and conditions of the Agreement.

(2) The diversion of the eligible commodity to a country other than the eligible country is prohibited. Transshipments of the eligible commodity are permitted only if specifically allowed in the applicable Invitation or for shipment through a Canadian transshipment port on the St. Lawrence River if the eligible commodity had been shipped from the United States via the Great Lakes coastal range and its identity had been preserved until shipped from Canada.

(3) Regardless of whether or not a bonus has been paid by CCC to the exporter pursuant to §1494.701, the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement. In order to retain a bonus or request payment of a bonus, depending upon the option chosen for furnishing performance security, and to request cancellation of the performance security, the exporter must provide evidence to CCC, as specified in §1494.401(f)(2), that the eligible commodity entered into the eligible country. If, on the basis of evidence available to it, CCC determines that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country, CCC will not release the amount of performance security corresponding to the amount of eligible commodity for which insufficient evidence of entry into the eligible country was presented to CCC until:

(i) CCC recovers from the exporter the amount of the bonus corresponding to such amount of the eligible commodity, if the exporter has already been paid the bonus under performance security “Option A”; and

(ii) The requirements of either §1494.401(f)(1)(i) or §1494.401(f)(1)(ii) have been met.

(4) The failure of an exporter to perform in full and to fulfill all of its obligations under the Agreement will constitute a breach of the Agreement. An exporter which breaches the Agreement may be required to forfeit its right to receive or retain part or all of the bonus authorized or paid under the Agreement and may also be liable to CCC for damages. Examples of an exporter’s failure to perform under the Agreement include, but are not limited to, the following:

(i) The exporter does not ship all of the required amount of the eligible commodity in accordance with the delivery period stated in the Agreement;

(ii) The exporter exports an amount of the eligible commodity that is inconsistent with the quality specifications in the Agreement;

(iii) The exporter is unable to provide a certification that all of the eligible commodity exported pursuant to the Agreement was entered into the eligible country;

(iv) The eligible commodity is transshipped through any country, other than Canada, unless specifically allowed in the applicable Invitation; or

(v) The eligible commodity is transshipped through Canada without having its identity preserved.

(5) If the eligible commodity is to be delivered to the eligible buyer in multiple shipments, CCC may decide to consider the shipments separately in determining whether the exporter has failed to perform under the Agreement.
(b) **Return of bonus.** An exporter that fails to fulfill all of its obligations under the Agreement shall be in default. If an exporter that has already been paid the bonus value defaults, CCC shall have the right to recover the bonus value paid for the quantity of the eligible commodity with respect to which the exporter failed to perform under the Agreement.

(1) If CCC has paid this bonus value in the form of a CCC Certificate(s), the exporter shall pay to CCC the higher of:

(i) The dollar value of the CCC Certificate(s);

(ii) The dollar amount received for the CCC Certificate(s) if the CCC Certificate(s) was transferred to another party; or

(iii) The dollar amount of the proceeds from the sale of the CCC-owned commodities exchanged for the CCC Certificate(s) if the commodities were sold to another party.

(2) If CCC has paid this bonus value in some other form, as specified in the applicable Invitation, the exporter shall pay to CCC the dollar and cents amount or equivalent of the bonus value paid to the exporter.

(c) **Liability for liquidated damages.** The exporter’s failure to perform under the Agreement will cause serious and substantial losses to CCC, such as damages to the EEP and CCC’s domestic price support program, storage charges, and administrative and other costs incurred. If the exporter breaches the Agreement, the exporter will be liable to pay to CCC as liquidated damages an amount obtained by applying the method or rate for determining damages specified in the applicable Invitation to the quantity of the eligible commodity with respect to which the exporter failed to perform under such Agreement. In submitting an offer in response to an Invitation issued under this subpart, the exporter agrees that such liquidated damages are reasonable estimates of the probable actual damages which may be incurred by CCC.

(d) **Decision to hold the exporter harmless for liquidated damages.** CCC will hold an exporter harmless for the payment of liquidated damages if:

(1) The exporter’s failure to perform under the Agreement was due to causes solely without the exporter’s fault or negligence and the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and enter it into the eligible country; or

(2) The eligible commodity was lost or destroyed after it had been placed aboard the export carrier.

In making the decision whether to hold an exporter harmless pursuant to this paragraph, CCC may consider any information available to CCC, including any information provided to it by the exporter.

(e) **Fraud, scheme or device.** Notwithstanding any other provision of law, CCC may take action to recover any bonus paid or to hold the exporter liable for the payment of damages caused to CCC if the exporter engages in fraud with respect to the EEP, or adopts or participates in adopting a scheme or device which is designed to evade this subpart or which has the effect of evading this subpart. Such acts shall include, but are not limited to:

(1) Concealing information which is required by this subpart; or

(2) Submitting information which is known by the exporter to be false or erroneous.

(f) **CCC’s right to recover amounts due CCC by exporters.** If the exporter breaches its obligations under the Agreement and becomes liable to CCC for repayment of the bonus value or for liquidated or other damages, CCC reserves the right to recover such amounts due CCC by making a claim against the performance security furnished to CCC, as described under §1494.401, or by taking any other measures available to CCC as a result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(g) **Shipping tolerances.** If the exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is less than the quantity specified in §1494.501(c)(7) but not less than such quantity minus 5 percent, the exporter shall not be required to pay liquidated damages for failure to perform under the Agreement for the quantity which failed to be exported and entered into...
the eligible country. If an exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is greater than the quantity specified in §1494.501(c)(7), the exporter may request payment of the bonus value based upon the actual quantity, on a net weight basis, exported and entered into the eligible country, but not greater than the quantity specified in §1494.501(c)(7), plus 5 percent.

(h) Termination of agreements. (1) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, as a result of:

(i) the failure of the exporter to carry out any provisions of the Agreement;

(ii) the failure of the exporter to maintain a business office in the U.S.;

(iii) the failure of the exporter to maintain an agent in the U.S. for service of process; or

(iv) the suspension or debarment of the exporter from participation in CCC or other U.S. Government programs.

If an Agreement is terminated by CCC pursuant to this subparagraph, CCC will not compensate the exporter for any costs incurred by the exporter. The exporter will be liable to CCC for any funds owed to CCC for the repayment of any bonus already paid and may be liable to CCC for liquidated or other damages suffered by CCC. If CCC intends to hold the exporter liable for liquidated damages, and it has not already so notified the exporter prior to the termination of the Agreement, CCC will generally do so at the time that it notifies the exporter of the termination of the Agreement.

(2) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, if CCC determines it to be in the best interest of CCC. If an agreement is so terminated, the exporter will be compensated for reasonable losses, as determined by CCC, resulting from such termination. These losses will not include lost profits and will not exceed the bonus value under the Agreement.

(i) Amendment of agreements. (1) CCC will have the authority to amend an Agreement, either before or after such Agreement has been breached by the exporter, if the exporter requests that the Agreement be amended and CCC determines that such amendment would serve the best interests of the EEP. The exporter may be required to submit documentary evidence to CCC to demonstrate that it is making progress toward fulfilling the Agreement before CCC will consider amending the Agreement. All requests for amendments submitted by exporters, and all amendments made by CCC to an Agreement, under this subpart shall be in writing.

(2) Prior to amending an Agreement with the exporter, CCC will consider whether the amendment to the Agreement should include a reduction in the CCC bonus or a modification of the sales price. If CCC determines that the CCC bonus and the sales price are still acceptable, it may amend the Agreement to incorporate the exporter’s requested change, while maintaining the current CCC bonus and sales price, provided that the amendment would otherwise serve the best interests of the EEP. If CCC determines that the CCC bonus and/or the sales price are no longer acceptable, due to changes in market or other conditions, it will so inform the exporter. If the exporter still requests that the Agreement be amended, CCC and the exporter will enter into discussions in an attempt to arrive at a new CCC bonus and/or sales price which would be acceptable to CCC. If these discussions are successful, then CCC may amend the Agreement to incorporate the exporter’s requested change as well as the new CCC bonus and/or sales price, provided that the amendment would otherwise serve the best interests of the EEP. If these discussions are unsuccessful, then the Agreement will not be amended and the exporter will be considered to be in breach of the Agreement if it fails to perform under the terms of the Agreement.

(j) Amendments to sales contracts. In the event of an amendment to the sales contract between the exporter and the eligible buyer or a change in the delivery schedule, CCC will determine whether the amendment or change would constitute a breach of the Agreement. If CCC determines that the amendment or change would constitute a breach of the Agreement, CCC may
§ 1494.901 Dispute resolution and appeals.

(a) Dispute resolution. (1) The Director of the CCC Operations Division (Director, CCCOD) and the exporter will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the EEP, this subpart, the applicable Invitation, or the Agreement.

(2) The exporter may seek reconsideration of a determination by the Director, CCCOD, relating to the Agreement between the exporter and CCC by submitting a letter requesting reconsideration to the Director, CCCOD, within 30 days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter of the determination. The exporter may include with the letter requesting reconsideration any additional information which it wishes the Director, CCCOD, to consider in reviewing its request. The Director, CCCOD, will respond to the request for reconsideration within 30 days of the date on which the request or the final documentary evidence submitted by the exporter is received by him, whichever is later, unless the GSM extends the time permitted for response. If the exporter fails to request reconsideration of a determination by the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting such a request.

(3) If the exporter requested a reconsideration of a determination by the Director, CCCOD, pursuant to subparagraph (a)(2) of this section, and the Director, CCCOD, upheld the original determination, then the exporter may appeal the determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter fails to appeal the determination to the GSM, then any funds owed to CCC will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting an appeal to the GSM.

(b) Appeal procedures. (1) An exporter which has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director, CCCOD, relating to the Agreement between the exporter and CCC. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 days following the date of the final determination by the Director, CCCOD. In this appeal to the GSM, the exporter shall be entitled to an administrative hearing before the GSM. If the exporter indicates in its appeal letter that it desires such a hearing.

(2) If the exporter does not desire an administrative hearing, the exporter may submit any additional written information or documentation which it desires the GSM to consider in acting upon its appeal. This information or documentation may be submitted to the GSM up until the time that a decision is made by the GSM. The GSM will base the determination upon information contained in the administrative record. The GSM will endeavor to make a decision on an appeal not involving a hearing within 60 days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter to the GSM, whichever is later.

(3) If the exporter has indicated that it desires an administrative hearing, the GSM will set a date and time for the hearing which is mutually convenient for the GSM and the exporter. This date will ordinarily be within 60 days of the date on which the GSM receives the request for hearing. The hearing will be an informal procedure. The exporter and/or its counsel may present any administrative or documentary evidence to the GSM which it desires to have the GSM consider in
making a determination. A transcript of the hearing will not ordinarily be prepared unless the exporter bears the costs involved in preparing the transcript, although the GSM may arrange to have a transcript prepared at the expense of the Government if it is determined to be appropriate. The exporter may provide additional written information to the GSM up until the time that the GSM makes a determination. The GSM will base the determination upon the information contained in the administrative record and will endeavor to make a decision within 60 days of the date of the hearing or the date of receipt of the transcript, if one is to be prepared, whichever is later.

(4) The decision of the GSM will be the final determination of CCC and the exporter will be entitled to no further administrative appellate rights.

(5) If the GSM upholds a determination of the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC.

(c) Failure to comply with determination. If, for any reason, the exporter has failed to pay funds to CCC which have been determined to be owed to CCC under the Agreement and the exporter has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to withdraw funds from the performance security established by the exporter or to take any other measures available to CCC as result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(d) Exporter's obligation to perform. The exporter will continue to have an obligation to perform under the Agreement pending the conclusion of all procedures under this section.

§ 1494.1001 Miscellaneous provisions.

(a) Assignments. The exporter may not assign the Agreement or any rights thereunder, including the right to receive a bonus under the Agreement.

(b) Maintenance of records and access to premises. (1) For a period of five years after CCC agrees to the cancellation of an exporter's performance security for an Agreement, the exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with the Agreement. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, will have full and complete access to the premises of the exporter during regular business hours from the effective date of the Agreement until the expiration of such five-year period to inspect, examine, audit and make copies of the exporter's books, records and accounts concerning transactions relating to the Agreement, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. From the effective date of the Agreement and until the expiration of such five-year period, the exporter may be required to make available to the Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the performance of an EEP Agreement.

(2) The exporter must maintain the certification of entry specified in §1494.401(f)(2), and must provide access to such document if requested by the Secretary of Agriculture or an authorized representative, for the five-year period specified in subparagraph (b)(1) of this section.

(c) Arrival verification reviews. CCC will review, on an annual basis, a sufficient number of exports made in connection with EEP Agreements to ensure that the eligible commodity which was exported pursuant to each such Agreement arrived in the eligible country specified in the Agreement.

(d) Signatory on certifications. Any certification required from a person pursuant to this subpart or an Invitation must be signed by the person, if an individual, or by a partner or officer of the person, if the person is a partnership or a corporation, respectively.

(e) Officials not to benefit. No member of or Delegate to Congress, or Resident Commissioner, will participate or
share in any of the benefits of any Agreement entered into pursuant to the EEP, but this provision may not be construed to extend to an Agreement made by CCC with a corporation for its general benefit.

(f) Paperwork Reduction Act. The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0551–0028.

(g) Waiver of irregularities. CCC reserves the right to waive any informality or minor irregularity with respect to any aspect of the operation of the EEP or any Agreement executed thereunder in order to best accomplish the purposes of the program.

Subpart C—Dairy Export Incentive Program Criteria


Source: 56 FR 26324, June 7, 1991, unless otherwise noted.

§ 1494.1100 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation’s (CCC) Dairy Export Incentive Program (DEIP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for DEIP initiatives which will best meet the program’s objectives. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the DEIP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted dairy products in targeted destinations. In the operation of the DEIP, CCC will make reasonable efforts to avoid the displacement of commercial export sales of U.S. dairy products and to ensure that sales facilitated by the DEIP are in addition to, and not in place of, any export sales of dairy products that the exporter would have otherwise made in the absence of the program.

§ 1494.1101 Criteria.

The criteria considered in evaluating and approving proposals for the DEIP are those set forth in §1494.20 of this part.

Subpart D—Dairy Export Incentive Program Operations


Source: 57 FR 45263, Oct. 1, 1992, unless otherwise noted.

§ 1494.1200 Program operations.

This subpart contains the regulations governing the operation of the Dairy Export Incentive Program (DEIP) of the Commodity Credit Corporation (CCC). Under the DEIP, CCC facilitates the export of U.S. dairy products by paying bonuses to exporters which export U.S. dairy products to targeted markets in accordance with the terms and conditions of an Agreement entered into between the exporter and CCC. Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the DEIP. Any terms or conditions applicable to a particular Invitation for Offers (Invitation) under the DEIP, beyond those terms or conditions set forth in this subpart or subpart B of this part, will be specifically provided for in such Invitation.

§ 1494.1201 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0551–0029.
Commodity Credit Corporation, USDA

§ 1499.2 Definitions.

The following definitions are applicable to this part:

Activity means a project to be carried out by a participant, directly or through a subrecipient, to fulfill the objectives of an agreement.

Agreement means a legally binding agreement entered into between CCC and a participant to implement activities under FFPr.

CCC means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

CCC-provided funds means U.S. dollars provided under an agreement to a participant for expenses for the internal transportation, storage and handling of the donated commodities, expenses involved in the administration and monitoring of the activities under the agreement, and technical assistance related to the monetization of donated commodities.

Commodities mean U.S. agricultural commodities or products of U.S. agricultural commodities.

Donated commodities means the commodities donated by CCC to a participant under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service acting on behalf of CCC.

FFPr means the Food for Progress Program.

Force majeure is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

Income means interest earned on sale proceeds and other resources received by a participant, other than sale proceeds, as a result of carrying out an agreement. The term may include resources from VAT refunds, activity fees, interest on loans, and other sources.

Participant means an entity with which CCC has entered into an agreement.

Subrecipient means a legal entity that receives donated commodities, income, sale proceeds or other resources from a participant for the purpose of implementing in the targeted country activities described in a FFPr agreement and that is accountable to such participant.
1016

for the use of such commodities, funds, or resources. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of FAS.

Sale proceeds mean funds received by a participant from the sale of donated commodities.

Targeted country means the country in which activities are implemented under an agreement.

§ 1499.3 Eligibility determination.

(a) An entity will be eligible to become a participant only after FAS determines that the entity has:

(1) Organizational experience in implementing and managing awards, and the capability and personnel to develop, implement, monitor, report on, and provide accountability for activities in accordance with this part;

(2) Experience working in the proposed targeted country;

(3) An adequate financial framework to implement the activities the entity proposes to carry out under FFPr. In order to determine whether the entity is financially responsible, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party;

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the entity; and

(5) An operating financial account in the proposed targeted country, or a satisfactory explanation for not having such an account.

(b) In determining whether an entity will be eligible to be a participant, FAS may consider the entity’s previous compliance or noncompliance with the provisions of this part and part 1599 of this title. FAS may consider matters such as whether the entity corrected deficiencies in the implementation of an agreement in a timely manner and whether the entity has timely and accurately filed reports and other submissions that are required to be filed with FAS and other agencies of the United States.

§ 1499.4 Application process.

(a) An entity seeking to enter into an agreement with CCC shall submit an application, in accordance with this section, that sets forth its proposal to carry out activities under FFPr in the proposed targeted country. An application shall contain the items specified in paragraph (b) of this section and shall be submitted electronically to FAS at the address set forth at http://www.fas.usda.gov. An entity that has not yet met the eligibility requirements in §1499.3 may submit an application, but FAS will not enter into an agreement with an entity until FAS had made a determination of eligibility under §1499.3.

(b) An applicant shall include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction that contains the elements specified in paragraph (c) of this section; and

(3) A plan of operation that contains the elements specified in paragraph (d) of this section.

(c) The introduction shall include:

(1) An explanation of the need for the food aid in the targeted country and how the applicant’s proposed activities would address that need;

(2) Information regarding the applicant’s ability to become registered and operate in the targeted country;

(3) Information about the applicant’s past food aid projects; and

(4) A budget that details the amount of any sale proceeds, income, and CCC-provided funds that the applicant proposes to use to fund:

(i) Administrative costs;

(ii) Inland transportation, storage and handling costs; and

(iii) Activity costs.

(d) A plan of operation shall include:

(1) The name of the targeted country where the proposed activities would be implemented;

(2) The kind, quantity, and proposed use of the commodities requested, and any commodities that would be acceptable substitutions therefor, and the proposed delivery schedule;

(3) If monetization or barter is proposed:
Commodity Credit Corporation, USDA

§ 1499.4

(i) The quantity of the requested commodities that would be sold or bartered;

(ii) The amount of sale proceeds anticipated;

(iii) The amount of income expected to be generated;

(iv) The anticipated monetization completion date;

(v) The goods or services to be generated from the barter of the requested commodities; and

(vi) The value of the goods or services anticipated to be generated from the barter of the requested commodities.

(4) A list of each of the activities that would be implemented, with a brief statement of the objectives to be accomplished under each activity;

(5) For each proposed activity, the targeted geographic area, anticipated beneficiaries, and methods that the applicant would use to choose such beneficiaries, including obtaining and considering statistics on poverty levels, food deficits, and any other required items set forth on the FAS Web site at http://www.fas.usda.gov.

(6) For each proposed activity:

(i) An explanation of whether the activity would be carried out through the distribution or barter of the requested commodities or funded by sale proceeds, income, or a combination thereof; and

(ii) The amount of commodities requested and of any sale proceeds and income expected to be generated to carry out such activity; and

(iii) A detailed description of the activity, including the steps involved in its implementation and the anticipated completion date;

(7) Any cash or non-cash contributions that the applicant expects to receive from non-CCC sources that:

(i) Are critical to the implementation of the proposed activities; or

(ii) Enhance the implementation of the activities;

(8) Any subrecipient that would be involved and a description of each subrecipient’s responsibilities and its capability to perform responsibilities;

(9) Any governmental or nongovernmental entities that would be involved and the extent to which FPPr will strengthen or increase the capabilities of such entities to further economic development in the targeted country;

(10) The method by which the applicant intends to inform beneficiaries of an activity about the source of the requested commodities or funding for the activity and, where the beneficiaries will be receiving the commodities directly, how to prepare and use them properly;

(11) Established baselines, a timeline, and proposed outcomes that would enable FAS to measure the applicant’s progress towards achieving the objectives of the proposed activities;

(12) If the proposed activities would involve the use of sale proceeds or income:

(i) The process that the applicant would use to sell the requested commodities, including steps the applicant would take to use, to the extent possible, the private sector in the monetization process; and

(ii) The procedures that the applicant would use to assure that sale proceeds and income are received and deposited into a separate, interest-bearing account and disbursed from such account for use only in accordance with the agreement;

(13) A description of any port, transportation, storage, and warehouse facilities that would be used with sufficient detail to demonstrate that they would be adequate to handle the requested commodities without undue spoilage or waste, and, in cases where the applicant proposes to distribute some or all of the requested commodities, a description of how they would be transported from the receiving port to the point at which distribution would be made to the beneficiaries;

(14) Any reprocessing or repackaging of the requested commodities that would take place prior to the distribution, sale or barter by the applicant;

(15) The action the applicant would take to ensure that any commodities to be distributed to beneficiaries, rather than sold, would be imported and distributed free from all customs, duties, tolls, and taxes;

(16) A plan that shows how the requested commodities could be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products
§ 1499.5 Agreements.

(a) After FAS approves an applicant’s proposal, FAS will develop an agreement in consultation with the applicant. The agreement will set forth the obligations of CCC and the participant. A participant must comply with the terms of the agreement to receive assistance.

(b) A participant shall not use donated commodities, sale proceeds, income or CCC-provided funds for any activity or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of sale proceeds and CCC-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any donated commodities or CCC-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in this part.

(e) A participant will be prohibited from using CCC-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination by CCC of the agreement. In addition to the imposition of any other applicable civil and criminal penalties, (f) The agreement will prohibit the sale or transshipment of the donated commodities to a country not specified in the agreement for as long as such donated commodities are controlled by the participant.

(g) CCC may enter into a multi-country agreement in which donated commodities are delivered to one country and activities are carried out in another.

(h) CCC may provide donated commodities and CCC-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

§ 1499.6 Payments.

(a) If the participant arranges for transportation in accordance with §1499.7(b)(2), and the participant seeks payment directly, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS, the following documents:

1. A signed copy of the completed Form CCC–512;
2. The original, or a true copy of, each on-board bill of lading indicating the freight rate and signed by the originating carrier;
3. For all non-containerized cargoes:
   i. A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);
   ii. A signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate);
4. For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;
5. A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;
6. In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances of force majeure have prevented the vessel’s arrival at the first port of discharge;
7. A request by the participant for reimbursement of freight, survey costs other than at load port, and other expenses approved by CCC, indicating the
amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant; and

(8) A document on letterhead and signed by an officer or agent of the participant specifying the name of the entity to receive payment; the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the participant's taxpayer identification number; and the type of the account into which the payment will be deposited.

(b) If the participant arranges for transportation in accordance with §1499.7(b)(2), and the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in §1499.6(a) in order to receive payment from CCC.

(c) In no case will CCC reimburse a participant for demurrage costs or pay demurrage to any other entity.

(d) If FAS has agreed to pay the costs of transporting, storing, and distributing the donated commodities from the designated port or point of entry, the participant will be reimbursed in the manner set forth in the agreement.

(e) If the agreement authorizes the payment of CCC-provided funds, CCC will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (f)(1) of this section. The participant shall request the payment of CCC-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement.

(f)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required reports, as specified in §1499.13 and in the agreement, are more than six months in arrears.

(2) Except as may otherwise be provided in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in §3019.22(k) of this title apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to CCC any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS accounting for all funds advanced and all interest earned.

(3) The participant shall return to CCC any funds that are advanced by CCC if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(g) If a participant is required to pay funds to CCC in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(h) Suppliers of commodities shall seek payment according to the purchase contract with CCC.

§1499.7 Transportation of goods.

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by CCC under FFPr will be acquired under a specific agreement in the manner determined by FAS. Such transportation will be acquired by:

(1) CCC in accordance with the Federal Acquisition Regulations (FAR), USDA’s procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR), and directives issued by the Director, Office of Procurement and Property Management, USDA; or

(2) The participant, with reimbursement by CCC, in the manner specified in the agreement.

(c) A participant that acquires transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the FMC and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the participant must submit
§ 1499.8 Entry and handling of commodities.

(a) The participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodities passes to the participant by contracting directly with suppliers of services, as set forth in the agreement.

(c)(1) If a participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities were furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the donated commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the reprocessed product;

(iii) Includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered.

(3) If a participant distributes donated commodities that are not packaged, the participant shall, to the extent practicable, display:

(i) Banners, posters or other media informing the public of the name and source of the donated commodities; and

(ii) A statement that the donated commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered.

§ 1499.9 Damage to or loss of commodities.

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the participant. The participant will be responsible for the donated commodities following the transfer of title to the commodities to the participant. The title will transfer as specified in the agreement.

(b) A participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities that occurs following the transfer of title to the commodities to FAS a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any FFPr agreement to which the participant is a party; and

(2) Is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant.

(d) A participant that is responsible for transportation under paragraph (b)(2) of this section shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported.
the participant. The participant shall take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs after title has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title to the commodities to the participant.

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the participant any report, narrative chronology or other commentary that it prepares;

(2) FAS and the participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the participant engages the services of the surveyor, CCC will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefor and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of $1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.
(e)(1) If the participant has title to the donated commodities, the participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The participant shall arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than $20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under §1499.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d)(1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, less any funds generated if such commodities are sold in accordance with §1499.9(e)(1).

(e) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(f)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the participant for such expense on a prorated basis.
§ 1499.11 Use of commodities and sale proceeds.

(a) A participant must use the donated commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in §1499.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in §3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

1. Owned or managed by a church or other organization engaged exclusively in religious pursuits; or
2. Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

§ 1499.12 Subrecipients.

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or CCC-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or CCC-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient’s failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient, FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities,
sale proceeds, income, or CCC-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

§ 1499.13 Recordkeeping and reporting requirements.

(a) A program participant shall retain records and permit access to records in accordance with the requirements of §3019.53 of this title. The date of submission of the final expenditure report, as referenced in §3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier’s on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with §3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and CCC provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the implementation of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

(i) Is financially and legally separate from the participant’s organization;

(ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;

(iii) Uses acceptable analytical frameworks such as comparison with
Commodity Credit Corporation, USDA

§ 1499.17

non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;
(iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and,
(v) Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

(2) Receipt by FAS of the evaluations referred to in paragraph (e)(1) of this section is a condition for the participant to retain any funds provided by CCC to carry out the evaluations.

(f) A participant shall submit to FAS the financial reports and information outlined in §3019.52 of this title. The agreement will specify the acceptable forms and time requirements for submission.

§ 1499.14 Noncompliance with an agreement.

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in §3019.62 of this title and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the donated commodities are damaged or lost or the sale proceeds, income, or CCC-provided funds are lost due to an action or omission of the participant.

§ 1499.15 Suspension, termination, and closeout of agreements.

(a) An agreement may be suspended or terminated by CCC if it determines that:
(1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or
(2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the targeted country.

(b) An agreement may be terminated in accordance with §3019.61 of this title. If an agreement is terminated, the participant shall:
(1) Be responsible for the safety of any undistributed donated commodities and dispose of such commodities only as agreed to by FAS; and
(2) Follow the closeout procedures in §§3019.71 through 3019.73 of this title.

(c) An agreement will be considered completed when CCC and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in sections §§3019.71 through 3019.73 of this title will apply to the closeout of a completed agreement.

§ 1499.16 Appeals.

A participant may appeal a determination arising under this part to FAS. Such appeal will be in writing and submitted to the FAS official and in the manner set forth in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.

§ 1499.17 Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0551-0035.