



# Federal Register

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**Friday,  
October 18, 2002**

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## **Part II**

### **Department of Agriculture**

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#### **Commodity Credit Corporation**

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**7 CFR Parts 1425, 1427, 1430, and 1434  
2002 Farm Bill Regulations—Cooperative  
Marketing Associations; Cotton; Dairy;  
Honey; Final Rule**

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Parts 1425, 1427, 1430 and 1434**

RIN 0560-AG72

**2002 Farm Bill Regulations—  
Cooperative Marketing Associations;  
Cotton; Dairy; Honey****AGENCIES:** Farm Service Agency,  
Commodity Credit Corporation.**ACTION:** Final rule.

**SUMMARY:** This final rule implements several requirements of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the commodity programs of the Commodity Credit Corporation (CCC). This rule expands the loans that may be available to producers through agricultural marketing cooperatives, makes a number of changes to the cotton regulations, provides for marketing assistance loans or loan deficiency payments to honey producers, and added new marketing assistance loan and loan deficiency payment programs for mohair and wool. The 2002 Act also continues the dairy price support program and authorizes a new Milk Income Loss Contract (MILC) Program to provide income support for dairy farmers. Several other rules have been or will be published for related provisions of the 2002 Act.

**EFFECTIVE DATE:** October 15, 2002.**FOR FURTHER INFORMATION CONTACT:**

Grady Bilberry, Director, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC, 20250-0512; telephone (202) 720-7901; facsimile (202) 690-3307; e-mail: [Grady\\_Bilberry@wdc.usda.gov](mailto:Grady_Bilberry@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:****Notice and Comment**

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

**Executive Order 12866**

This final rule is economically significant according to Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of the actions this rule will take was completed and is summarized after the background section.

**Federal Assistance Programs**

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Review**

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has an effect on their planting and marketing decisions. Thus, CCC is attempting to satisfy both the Congressional mandate and its public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

**Executive Order 12778**

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive. Before any

judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about the subject matter of this rule. Further, this rule imposes no unfunded mandates, as defined in UMRA, on any local, state, or tribal government or the private sector.

**Small Business Regulatory Enforcement Fairness Act of 1996**

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of an extraordinarily large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

**Paperwork Reduction Act**

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

### Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically through the USDA eForms Web site at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov) for downloading. The regulation is available at FSA's Price Support Division Internet site at [www.fsa.usda.gov/dafp/psd](http://www.fsa.usda.gov/dafp/psd). Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

### Background

The 2002 Act made major revisions to the commodity programs. This rule expands the loans that may be available to producers through agricultural marketing cooperatives, known as Cooperative Marketing Associations (CMA). This rule also revises CCC's cotton regulations, and implements a new regime for producers of wool, mohair, and honey. Finally, it provides regulations that govern the milk price support program and the new Milk Income Loss Contract (MILC) Program, designed to provide price protection to U.S. dairy producers. The programs implemented in this rule are effective for up to 6 years, and will contribute to a farm income support program, or "safety net", that is more stable and certain than that provided by yearly programs. The major provisions of this rule are specified as follows:

#### Cooperative Marketing Associations

CCC has been making loans available to producers through agricultural marketing cooperatives for over 60 years, and loan deficiency payments since 1986, beginning with commodity loans to cotton cooperatives in 1934. This program is expanded under the 2002 Act to include marketing assistance loans and Loan deficiency payments for peanuts, dry peas, lentils, small chickpeas, mohair and wool. Consequently, these commodities are added to those previously eligible, and loans and loan deficiency payments are

now available through approved agricultural marketing cooperatives for barley, corn, grain sorghum, honey, oats, oilseeds, peanuts, wheat, dry peas, lentils, small chickpeas, mohair, wool, upland cotton, and rice. This rule amends the regulations governing cooperatives to authorize the new commodities.

#### Cotton

This rule makes a number of changes to the cotton non-recourse loan and loan deficiency payment programs the recourse seed cotton loan program, the upland cotton user marketing certificate program, and the extra long staple (ELS) cotton competitiveness payment program. The regulations at 7 CFR part 1427 are revised accordingly. The changes are required to administer provisions of the 2002 Act, and to remove provisions that are not applicable or authorized. It also improves readability and removes provisions that are not consistent with current statutory authority or otherwise are extraneous.

The 2002 Act provides that eligible 2001-crop marketing assistance loan commodities that were produced on a farm not covered by a production flexibility contract (PFC) are eligible for loan deficiency payments, as well as producers who lost beneficial interest in an eligible 2001-crop loan commodity before applying for a loan or loan deficiency payment. The loan deficiency payment rate will be based on the date the producer lost beneficial interest in the commodity. Additionally, producers who acted in good faith and who lost beneficial interest in the collateral of a 2001-crop marketing assistance loan before repaying the loan shall be permitted to repay such loan at the rate effective on the date beneficial interest was lost. Accordingly, the regulation is amended to delete the requirement that cotton must be produced on a farm covered by a PFC.

This rule also makes changes resulting from termination of old program authority. For instance, subpart B of 7 CFR 1427, Regulations for the Upland Cotton First Handler Marketing Certificate Program, are removed because the regulations no longer apply to the cotton program. This program was discontinued under the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) because it permitted cotton marketing assistance loans to be repaid at the world market price level while, before then, they could be repaid only at 70 percent of the world market price. The value difference was then provided by commodity certificates under the First

Handler Marketing Certificate Program. Those regulations have not applied to the cotton program for years. This rule also removes 7 CFR part 1427, subpart F, Cottonseed Payment Program, because there is no longer statutory authority for a cottonseed payment program.

Several changes in the cotton regulation's administrative provisions are made as well. Under previous calculations, some loan repayment rates were calculated as negative values, resulting in additional disbursements by CCC, and some loan deficiency payment rates exceeded the loan value of the cotton. This rule clarifies that the adjusted world price shall not be adjusted to a value less than zero, and that the loan deficiency payment rate shall not exceed the loan value for the cotton. These changes are the result of a determination that some adjustments to the adjusted world market price, and the resultant marketing loan gains and loan deficiency payment rates, were not consistent with the statutory authority for the payments. Under previous calculations, some loan repayment rates were calculated as negative values, resulting in additional disbursements by CCC. Establishing the minimum loan repayment rate as zero is consistent with provisions of the 2002 Act that provide that loan deficiency payment rates shall be equal to the marketing loan gain that would otherwise result.

#### Dairy

The regulations at 7 CFR part 1430 are revised to implement a new program for dairy producers authorized by section 1502 of the 2002 Act, the Milk Income Loss Contract (MILC) Program. The program is in effect from December 1, 2002 through September 30, 2005. This program comes after several ad hoc programs provided through appropriations acts over the past few years. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 authorized the Dairy Market Loss Assistance Payment (DMLA-I) program to provide direct payments to producers of dairy operations for milk produced and commercially marketed during the 1997 or 1998 calendar year. Then, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 provided a second Dairy Market Loss Assistance Program (DMLA-II) which continued DMLA-I for 1999 production. And finally, section 805 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001

authorized the last Dairy Market Loss Assistance Payment Program (DMLA—III). DMLA—III provided a supplemental payment to producers who received payments under DMLA—II and to new dairy operations in 2000.

Payments disbursed from the previous Dairy Market Loss Assistance Programs (DMLA) were subject to a maximum eligible production quantity per each eligible dairy operation, as is the case for the new MILC Program. For purposes of determining an operation under the MILC Program, the 2002 Act provided that the same standards as were applied in implementing DMLA were to be used. Payments issued under the previous dairy market loss payment programs were one-time payments authorized through appropriation acts. Payments issued under the MILC Program will be made as applicable on a monthly basis until the program ends on September 30, 2005.

Milk is produced in all 50 states. According to the National Agricultural Statistics Service, the estimated 98,000 dairy operations in the United States in 2001 were expected to produce about 167 billion pounds of milk in 2002. The maintenance and expansion of existing markets for dairy are vital to the welfare of milk producers in the United States. In the past few decades, the U.S. dairy industry has experienced dramatic structural changes at all levels of the marketing channel.

Payments under this program will be limited to dairy operations that produced milk in the United States and commercially marketed milk during the period of December 1, 2001, through September 30, 2005. Each fiscal year, eligible dairy operations can receive a monthly payment based on monthly milk marketings, up to a maximum of 2.4 million pounds per dairy operation for the fiscal year. Dairy operations who make changes to their producer status or who reconstitute their farm operations on or after December 1, 2001, for the sole purpose of receiving additional payments will not be eligible for the benefits under the program implemented by this rule.

A dairy operation's eligible monthly payment will be the quantity of milk sold in that month, up to a maximum of 2.4 million pounds, multiplied by 45 percent of the difference between \$16.94/cwt. and the Federal milk marketing order Class I milk price per hundredweight in Boston for that month. To facilitate a transition to this new program, a similar payment calculation will be applied from December 1, 2001, through the month preceding the month the producer enters into a contract with CCC.

To be eligible, dairy producers must: (1) Produce in the United States and market milk commercially during the period of December 1, 2001, through September 30, 2005; (2) enter into a contract with CCC to provide monthly marketing data to receive payments; and (3) be engaged in the business of producing and marketing agricultural products at the time of signing the MILC Program contract. Dairy operations may apply at FSA county offices during regular business hours.

The rule provides for payments during the transition period beginning December 1, 2001, and ending when producers enter into the Milk Income Loss Contract. Consistent with the 2002 Act, the rule has a cap on production of 2.4 million pounds which are eligible for payments in a given fiscal year. Producers are only eligible for transition payments under section 1502(h) of the 2002 Act once they enter into the Milk Income Loss Contract pursuant to section 1502(b). There is no legislative history to support the proposition that Congress intended to establish a totally different standard for payments during the transition period than the one that applies to regular program payments. If there were no cap on transition payments, this could lead to the result of producers signing up for September 2005, and none of their production during the transition period from December 2001 through August of 2005, being subject to a cap. There would effectively be no limitation on payments. There is nothing in the Conference Report to indicate that this was the intent of Congress. Rather, section 1502(b) of the 2002 Act allows dairies to enter into the program by contract and provides explicitly in section 1502(d) for the 2.4 million pound cap. This program limit follows upon three previous Dairy Market Loss Assistance (DMLA) programs in which there were similar production eligibility caps.

Although there was not an operational program under section 1502 in advance of this rule, complaint has been made that there should be no limit on the "transition" payments allowed under section 1502(h). Offered to support this contention is that since section 1502(d) refers to section 1502(b), the limit does not cover the "transition" payments because they, the argument goes, are made under subsection (h). But, no payments can be made for the transition period (the period after December 1, 2001 and before the signing of the contract) except by signing the contract under subsection (b). Accordingly, all payments, including those referred to under subsection (h) are payments

generated by and controlled by and made under subsection (b). Nothing in subsection (d) indicates that the only fiscal years covered by the cap are those after the signing of the contract. Without reservation, subsection (d) covers all fiscal years under the program, including fiscal year 2002, in which the transition payments can begin. Accordingly, the rule specifies that the cap covers all fiscal years including the fiscal year in which the transition period falls. All payments are covered and made available pursuant to one contract, which is the contract entered into under subsection (b).

The Conference Report states: "Producers, on an operation-by-operation basis, may receive payments on no more than 2.4 million pounds of milk marketed per year." The statement does not exclude any year. If there is no cap for the transition period and if the transition period can be delayed at the will of the producer, then any producer willing to forego payments until September, 2005, could avoid the cap entirely for the entire length of the program, thereby rendering the cap a nullity. There is no support in the statute or the legislative history to support this position.

The rule, with some limitations, allows dairies to choose the month of the year in which they will begin to use their eligibility since there is nothing as such in the statute to specify when that eligibility must commence. Those determinations, however, under the rule, must be made in advance. This position is consistent with the manner in which CCC implements other, similar programs, primarily the loan deficiency payment programs where farmers must, in advance, select the date on which their loan deficiency payment rate will be determined rather than being allowed to select a date retroactively in order to obtain the highest possible payment. The determination made by CCC on this point allows the dairy, nonetheless, to pick in advance the month which it believes will be the optimum month for the dairy. This is consistent with the timing requirements in the 2002 Act, which presume contemporaneous reporting of monthly marketings followed by monthly payments rather than an end-of-the-year determination by a dairy followed by an annual payment when, in hindsight, using the eligibility cap would produce the greatest payment.

As noted, dairies upon signing the contract will also be able to earn a transition payment under the contract for marketings in the period during and after December of 2001, and through the effective date of the contract, subject to

the fiscal year limitation of 2.4 million pounds of milk eligibility. To provide additional flexibility, however, consistent with the rules set out above, dairies have been allowed to choose to use their 2.4 million pound eligibility for fiscal year 2002 (which began in October of 2001) beginning with the month after they signed the contract and to waive the transition amount if doing so would, because of the cap, increase their payment. Other policy determinations necessary to implement the statute are reflected in the text of the rule.

The rule requires, consistent with the 2002 Act's mandate, that the same standards will be used for defining what is and what is not an "operation" for purposes of eligibility for payments. Those determinations can have particular significance because of the cap in the statute. The rule in that manner requires that those who were treated by local decisions of their Farm Service committees and offices as operations for purposes of eligibility under the preceding DMLA programs will be treated the same way. The 2002 Act specifies that for purposes of determining whether producers are producers on separate dairy operations or a single dairy operation that the

Secretary shall apply the same standards as were applied under DMLA. CCC will issue a notice to clarify how these standards will be applied to new or reconstituted operations and how it will be determined whether new operations were affiliated with operations under DMLA.

Section 1501 of the 2002 Act extends the Milk Price Support Program effective June 1, 2002, and continues the \$9.90 per hundredweight support rate for milk that was previously in effect.

*Honey*

The regulations at 7 CFR part 1434 are revised in this rule to provide marketing assistance loans and loan deficiency payments for honey. CCC operated a honey recourse loan program in the 1998, 1999 and 2000 crop years. In 2000 the program was converted from a recourse loan program to a nonrecourse marketing assistance loan program which also allowed eligible producers to obtain loan deficiency payments. Section 1201 of the 2002 Act authorizes a continued program for marketing assistance loans and loan deficiency payments for honey. This new program will operate in a similar manner to the previous programs. The loan rate for a honey marketing assistance loan is set by the 2002 Act at 60 cents per pound.

Producers may repay a marketing assistance nonrecourse loan at an amount equal to the principal amount of the loan plus interest or the prevailing market price for honey, as determined by CCC. The marketing loan repayment rate will be announced monthly by CCC. The 2002 Act also provides, for the 2002 crop only, eligibility for honey producers for loan deficiency payments even if the producer has lost beneficial interest in their honey before applying for the payment.

*Summary of the Cost/Benefit Assessment*

The 2002 Act added new marketing assistance loan and loan deficiency payment provisions for peanuts, dry peas, lentils, small chickpeas, mohair and wool. This rule also provides for agricultural marketing cooperatives to process marketing assistance loan and loan deficiency payment requests. This is a positive change in that government outlays will not be affected, and the agricultural marketing cooperatives will help FSA service anticipated increased loan-making activities. The 2002 Act changes in this rule, when compared with the 1996 Act provisions, will increase governmental outlays as shown in Table 1.

TABLE 1.—AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

Program	Estimated average annual outlay change (million dollars)
Cotton (7 CFR Part 1427):	
Marketing Assistance Loans .....	8.0
Loan Deficiency Payments .....	95.0
Extra Long Staple Cotton Competitiveness Program .....	(1.5)
Dairy (7 CFR 1430):	
Milk Price Support .....	333.3
Milk Income Loss Contract Program Payments 1/ .....	666.0
Honey (7 CFR part 1434): Marketing Assistance Loans and Loan Deficiency Payments	
Total 1,103.0 .....	2.2

<sup>1</sup> Annual average over 4 fiscal years.

*Cotton Marketing Assistance Loans and Loan Deficiency Payments*

The 2002 Act increased the loan rates very slightly for both upland and extra long staple (ELS) cotton varieties. Aside from that, only a few cotton program changes, and none with a significant economic impact, were made by the 2002 Act. Outlays for marketing loans are projected at \$1.2 billion for upland cotton in FY 2003, but they decline to \$0.4 million by FY 2007. This decline is attributed to the effect of rising cotton prices and planting flexibility which allows producers to adjust their cotton acreage to conform with expected

demand. Loan outlays for ELS cotton are projected to be minimal and not affected by enactment of the 2002 Act.

*Upland Cotton User Marketing Certificate Program (Step 2)*

The 2002 Act increased the payment rate 1.25-cents per pound for the Upland Cotton User Marketing Certificate Program, commonly known as the "Step 2 Program." This payment rate is expected to increase program outlays by about \$95 million per year through fiscal year 2006.

*ELS Cotton Competitiveness Payment Program*

The 2002 Act extended and fully funded the ELS Cotton Competitiveness Payment Program, which is similar to the Step 2 program. The program is designed to trigger payments in response to a reduction in other world cotton prices, including Egyptian Giza cotton. This program had been dormant for several months because U.S. Pima cotton was competitive. However, payments began to trigger in January 2002 and have now reached over 10 cents per pound in response to price reductions in Egypt.

Since the ELS Cotton Competitiveness Payment Program began in October 1999, payments have totaled about \$3.2 million on 50,500 bales for domestic use and 338,000 bales of exports. The program has operated for approximately one-half the time since it began. The rate has averaged \$7 per bale, or about 1.4 cents per pound. Payments have depended on reductions in foreign prices. There is no maximum payment rate. However, given current prices, the ELS competitiveness payment program could generate payments in the range of 1 to 3 cents per pound on weekly export and mill activity and would likely incur outlays of around \$50,000 to \$150,000 per week when triggered. Annual outlays for ELS payments are estimated to be in the range of \$1.3 million to \$3.9 million per year.

ELS Cotton Competitiveness Program payments could increase domestic use of American Pima cotton by about 5,000 bales (about 3 percent) per year and exports by 25,000 bales (about 5 percent) per year. This increase in disappearance could add about 2 cents per pound to the average price of American Pima and reduce CCC net lending costs about \$25 million. Farm receipts will rise about \$4 million annually.

#### *Dairy*

Section 1501 of the 2002 Act extends the Milk Price Support Program starting June 1, 2002. The \$9.90 per hundredweight (cwt.) milk support rate is the same as during calendar year 1999 through May 31, 2002. The support rate applies to manufacturing milk, which is milk used in the production of cheese, butter, and nonfat dry milk (NDM).

Under the Milk Price Support Program, CCC has standing offers to purchase cheese, butter, and NDM at established prices. Processors with an average efficiency should be able pay dairy farmers \$9.90 per cwt. when receiving CCC-announced prices.

CCC has purchased substantial quantities of NDM in recent years, including about 418 million pounds in fiscal year (FY) 2001, 456 million pounds in FY 2000, 177 million pounds in FY 1999, and 119 million pounds in FY 1998. This is because the market NDM price has been near or below the CCC purchase price since January 1999. Also, cheese prices dipped below the CCC support level in mid June of 2002, and thus, cheese has been acquired by CCC under this program. Cheese purchases were 13.1 million pounds in FY 2001 and 6.8 million pounds in FY 2000. The price for butter has stayed consistently above the CCC purchase price since the mid-1990's so there have

been no recent purchases of butter by CCC.

CCC expects to purchase 650 million pounds of NDM in FY 2002. We expect that some of the NDM that CCC purchases will be utilized in international and domestic feeding programs, and another \$15 million worth will be sold for other purposes. CCC expenditures with the extended program will be approximately \$2.0 billion for FY 2002 through 2007, of which \$1.6 billion is for product purchases. No expenditures are projected for purchases after FY 2007 because of milk price increases.

The MILC Program is expected to result in payments to dairy operations over the four FY's in the range of \$3.5 to \$4.5 billion annually. Dairy farm income and CCC expenditures will increase accordingly.

#### *Honey*

The honey loan rate, 60 cents per pound, is not expected to exceed the market price until 2007 due to the countervailing and anti-dumping duties placed on honey imports from Argentina and China. Because the program has no immediate effect on price, domestic honey production should not be affected. There are also no significant expected effects on market prices or demand. The major producer benefit is reduced borrowing costs compared with commercial loans. Interest savings are estimated at \$5.3 million. Even if price falls below the loan rate no expected effect on market prices or demand is expected because the farmers' benefits will be obtained through loan deficiency payments or marketing loan gains, not market price improvement through honey removals from forfeitures. CCC has limited ability to affect market prices. Domestic honey prices are closely related to import prices because of sizeable quantities imported. For the 1996–1999 period, honey imports represented about 45 percent of total domestic honey consumption. Sizable CCC inventory in the 1980's was partially a result of higher loan rates and the lack of a marketing loan repayment mechanism which produced higher imports instead of higher domestic market prices. Because the 2002 Act does not affect foreign honey prices, it is also unlikely to affect domestic honey prices. Thus, prices are expected to be unaffected by the loan program and domestic consumers will not be affected.

CCC estimates that there will be no loan losses from FY 2002 to FY 2007. Conversely, the producer income increase from marketing loan gains, loan deficiency payments, and gains from

loan forfeitures is about 14 cents per pound. CCC loan losses and producer loan gains are estimated to be \$9.8 million. CCC cost and producer gains from loan deficiency payments are estimated to be \$16.3 million. Total program cost and producer income increase is estimated at \$26.1 million. It is expected that 2.9 million pounds of honey, or 1.5 percent of production, will be forfeited to CCC.

#### **List of Subjects**

##### *Part 1425*

Agricultural commodities, Cooperatives, Marketing agreements, Loan programs-agriculture, Reporting and record keeping requirements.

##### *Part 1427*

Cotton, Loan programs-agriculture, Price support programs, Reporting and record keeping requirements

##### *Part 1430*

Dairy products, Loan programs-agriculture, Price support programs, Reporting and record keeping requirements.

##### *Part 1434*

Honey, Loan programs-agriculture, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR parts 1425, 1427, 1430 and 1434 are revised as set forth below.

#### **PART 1425—COOPERATIVE MARKETING ASSOCIATIONS**

1. The authority citation for part 1425 is revised to read as follows:

**Authority:** 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

2. Amend § 1425.3 by revising the definition of “authorized commodity” to read as follows:

##### **§ 1425.3 Definitions.**

\* \* \* \* \*

*Authorized commodity* is a commodity for which a CMA is approved by CCC to obtain marketing assistance loans or Loan deficiency payments.

\* \* \* \* \*

3. Amend § 1425.4 by revising the first sentence in paragraph (a) to read as follows:

##### **§ 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. \* \* \*

\* \* \* \* \*

4. Amend § 1425.6 by revising the introductory text in paragraph (b) to read as follows:

**§ 1425.6 Approved CMA'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:

\* \* \* \* \*

5. Revise § 1425.25 to read as follows:

**§ 1425.25 Appeals.**

Parts 11 and 780 of this title apply to this part.

**PART 1427—COTTON**

6. Amend part 1427 by revising the authority citation and Subparts A, C, D, and G, and removing and reserving Subpart B, consisting of §§ 1427.50 through 1427.58, and Subpart F, consisting of §§ 1427.1100 through 1111, to read as follows:

**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 Reconciliation of cotton.
- 1427.17 Custodial offices.
- 1427.18 Liability of the producer.
- 1427.19 Repayment of loans.
- 1427.20 Handling payments and collections not exceeding \$9.99.
- 1427.21 Settlement.
- 1427.22 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.

**Subpart B—[Reserved]**

**Subpart C—Upland Cotton User Marketing Certificates**

- 1427.100 Applicability.
- 1427.101 [Reserved].
- 1427.102 [Reserved].
- 1427.103 Eligible upland cotton.
- 1427.104 Eligible domestic users and exporters.
- 1427.105 Upland Cotton Domestic User/ Exporter Agreement.

1427.106 Form of payment.

1427.107 Payment rate.

1427.108 Payment.

**Subpart D—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 F—[Reserved]**

**Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

- 1427.1200 Applicability.
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**Authority:** 7 U.S.C. 7213–7237; 15 U.S.C. 714b, 714c.

**Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments**

**§ 1427.1 Applicability.**

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of upland cotton and extra long staple cotton. 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 rates, 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 2002 through 2007 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) For the 2001 crop year only, allow producers who, in good faith, violated the terms and conditions of the note and security agreement resulting in the producer losing beneficial interest in the commodity before repaying the loan, to repay the loan at a rate that is the lesser of the loan plus interest, or the adjusted world price, as determined under § 1427.19, in effect on the date the beneficial interest was lost.

(2) Correct, or require a correction of an action that is not in compliance with this part; or

(3) 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, 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.

*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.

*Current shipment price* means, during the period in which two daily price quotations are available for the growth quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe, 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:

- (1) American-Pima;
- (2) All other varieties of the Barbados 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 nonrecourse loan entered into between a CMA and CCC.

*Forward shipment price* means, during the period in which two daily price quotations are available for the growths quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

*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 county loan rate.

*Loan servicing agent* means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

- (1) Preparing and executing loan and loan deficiency payment documents;
- (2) Disbursing loan and loan deficiency payment proceeds;
- (3) Handling reconcentration of cotton under § 1427.16;
- (4) Accepting loan repayments;
- (5) Handling documents involved with forfeiture of loan collateral to CCC; and
- (6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

*Northern Europe current price* means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*Northern Europe forward price* means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*Northern Europe price* means, during the period in which only one daily price quotation is available for the growth quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*Reconcentration* means the process for moving a warehouse stored loan commodity to another warehouse location.

*Seed cotton* means cotton which has not passed through the ginning process.

*U.S. Northern Europe current price* means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*U.S. Northern Europe forward price* means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*U.S. Northern Europe price* means, during the period in which only one daily price quotation is available for the United States growths quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, C.I.F. northern Europe.

*Upland cotton* means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadosense species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

*Warehouse receipt* means a receipt containing the required information prescribed in this part and is:

(1) 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;

(2) 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; or

(3) Other such acceptable evidence of title, as determined by CCC.

#### § 1427.4 Eligible producer.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, 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;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by CCC to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) 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.

(2) The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) 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 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, be covered by fire insurance, be stored in a warehouse with an existing cotton storage agreement under §§ 1427.1081 through 1427.1089 at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f), and be stored

in approved storage as determined under § 1427.10;

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in § 1427.23(a)(4);

(4) Not be false-packed, water-packed, mixed-packed, re-ginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds may be pledged for loan at 600 pounds.

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable crop year or which are identified and approved by the Joint Cotton Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year.

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available from CCC upon request.

(ii) Information for experimental packaging material may be obtained from the Joint Cotton Industry Bale Packaging Committee.

(11) Be ginned by a ginner which:

(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 a grade and staple length specified in the schedule of loan rates and premiums and discounts 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; and

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer, and a former producer whom the producer tendering the cotton to CCC has succeeded, had such an interest in the cotton. Cotton obtained by gift, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing marketing assistance loan shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the cotton occurs before or after harvest so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for marketing assistance loans or loan deficiency payments including those cases where the producer:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to

purchase, for such cotton if all other eligibility requirements are met and the option to purchase contains the following:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1427.5, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation (CCC) loan which is secured by such commodity; (2) the date CCC claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser pays no advance payment amount or any incentive payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes a designation of agent on a form prescribed by CCC. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a marketing assistance loan;

(B) Identifies the warehouse receipts for which the authorization is given;

(C) Expires upon maturity of the marketing assistance loan;

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent;

(E) Must be presented at the time the marketing assistance loan is repaid at the county office or loan servicing agent where such loan originated if the agent or subsequent agent exercises any authority granted by the producer, unless the producer provides authorization to CCC to use an electronic agent designation as the basis for accepting redemption of some or all bales of the specified loan; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Cooperating Ginners' Bagging and Bale Ties Certification and Agreement that was provided by the Agency. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) 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 in 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.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn 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.

(h) Marketing assistance loans may be disbursed to eligible producers who store upland cotton in unlicensed 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.

#### § 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

- (1) County in CCC and FSA offices;
- (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(a).

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

#### § 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) of this section by the applicable loan rate.

(d) CCC will not increase the amount of the loan made for any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made for the weight of the bale or the classification for the bale, such error may be corrected.

#### § 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include color grade, leaf, staple length, extraneous matter and micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a

bale must be based upon a representative sample drawn from the bale under instructions to samplers drawing samples under AMS procedures.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

#### § 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

#### § 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of

the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

- (1) Contain the gin bale number;
- (2) Contain the warehouse receipt number;
- (3) Be dated on or 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 written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,  
(Name of warehouse),  
By (Signature or initials),  
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North

Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the maturity date, will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

(g) The warehouse receipt must show the compression status of the bale; *i.e.*, flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

#### § 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

#### § 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. 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 elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the 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.

#### § 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 the marketing assistance loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To marketing assistance loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan documents, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All marketing assistance loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the marketing assistance loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by a Transmittal Schedule of Loan and Loan Deficiency Payment Documents (Transmittal) on a form prescribed by CCC, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advance. The Transmittal shall show the amounts invested by the person, firm, or financial institution in the marketing assistance loans or loan deficiency payments.

(3) Upon receipt of the marketing assistance loan or loan deficiency payment documents and Transmittal, the county office will stamp one copy of the Transmittal to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date marketing assistance loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(e) 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.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by CCC after the end of the month.

#### § 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the marketing assistance loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(1) An FSA official, the loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of CCC and CCC shall obtain new warehouse receipts.

(2) Any reconcentration charges, fees, costs, or expenses incident to such actions shall be charged against the cotton, and must be repaid for bales redeemed from loan.

#### § 1427.17 Custodial offices.

Collateral warehouse receipts, using forms prescribed by CCC, and related documents will be maintained in the custody of CCC, its designee, the loan servicing agent, or the cotton commercial bank, whichever disbursed the loan evidenced by such documents.

#### § 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a 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 delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a 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 of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith 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 or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages under paragraph (e) of this section;

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall 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, or 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.

(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 the marketing assistance loan is called 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.

#### **§ 1427.19 Repayment of loans.**

(a) Warehouse receipts 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.

(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) If the upland cotton pledged as collateral is eligible to be redeemed at a rate less than the loan level and charges, plus interest, and the adjusted world price determined under § 1427.25:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, the warehouse storage charges which have accrued, for the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit

the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

(i) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

**§ 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 loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC for eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay CCC the amount due under a loan, CCC shall take title to the cotton as provided in § 1427.7(b).

**§ 1427.22 Commodity certificate exchanges.**

(a) For any outstanding marketing assistance loan, 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, or

(2) The adjusted world price for cotton as determined by CCC.

(c) 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, and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

**§ 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) File a request for payment for a quantity of eligible cotton under § 1427.5(a) on a form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) 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 unginning 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 if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(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.

(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 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).

(g) With respect only to loan deficiency payments for upland cotton produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final availability for such payment is November 18, 2002.

**§ 1427.24 [Reserved].**

**§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.**

(a) CCC shall 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 1<sup>3</sup>/<sub>32</sub> inch) cotton, C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through

Thursday for the 5 lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe (Northern Europe current price (NEC)), and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe (Northern Europe forward price (NEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the NEC and NEf price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2:  $((2 \times \text{NEc}) + \text{NEf}) / 3$ .

(ii) Weeks 3 and 4:  $(\text{NEc} + \text{NEf}) / 2$ .

(iii) Weeks 5 and 6:  $(\text{NEc} + (2 \times \text{NEf})) / 3$ .

(iv) Week 7 through July 31: NEf.

(3) The upland cotton prevailing world market price as determined under paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the "Northern Europe price (NE)."

(4) If quotes are not available for 1 or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted under paragraph (c) of this section (adjusted world price (AWP)), shall be applicable to the 2002 through 2007 crops of upland cotton.

(c) The upland cotton AWP shall equal the NE price as determined under paragraph (a) of this section, adjusted as follows:

(1) The NE shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, during the period when both current shipment prices and forward shipment

prices for such growths are available; and

(ii) The average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined under paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1<sup>1</sup>/<sub>16</sub> inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton (U.S. base quality) by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop of the U.S. base quality.

(3) The price determined under paragraph (c)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for an upland cotton crop of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for an upland cotton crop of the U.S. base quality, as CCC announces.

(4)(i) The prevailing world market price, adjusted under paragraphs (c)(1) through (c)(3) of this section, may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe (U.S. Northern Europe price (USNE)), is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, the USNE provided in paragraph (c)(4)(i)(B) of this section shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced U.S. growth, as quoted

for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe (U.S. Northern Europe current price (USNEc)), and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price (USNEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the USNEc and the average of the USNEf are available, the result calculated by the following procedure:

(A) Weeks 1 and 2:  $((2 \times \text{USNEc}) + (\text{USNEf})) / 3$ .

(B) Weeks 3 and 4:  $(\text{USNEc}) + (\text{USNEf}) / 2$ .

(C) Weeks 5 and 6:  $(\text{USNEc}) + (2 \times \text{USNEf}) / 3$ .

(D) Week 7 through July 31: USNEf.

(iii) In determining the USNE as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(1) The U.S. share of world exports;

(2) The current level of cotton export sales and shipments; and

(3) Other data CCC determines relevant in establishing an accurate prevailing world market price, adjusted to U.S. quality and location.

(B) The adjustment may not exceed the difference between the USNE, as determined in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, and the NE, as determined in paragraph (a) of this section.

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory, as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, and the average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4

grams per tex, length uniformity 80 through 82 percent) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory, as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory, as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, and the average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) Both the Memphis territory and the California/Arizona territory as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, C.I.F. northern Europe, or

(ii) The average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted in the designated U.S. spot markets, that week will not be considered.

(e) The upland cotton AWP, determined under paragraph (c) of this section, and the amount of the additional adjustment determined under paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. Eastern Standard time each Thursday continuing through the last Thursday of July, 2008. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. Eastern Standard time the next work day.

(f)(1)(i) The AWP, as determined under paragraph (c) of this section, shall be subject to further adjustments 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<sup>1</sup>/<sub>16</sub> inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade and staple length must be determined under § 1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided under paragraph (f)(1) of this section shall be determined by deducting from the AWP:

(i) The difference between the NE, and

(A) During the period when only one daily price quotation for each growth quoted for “coarse count” cotton, C.I.F. northern Europe, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for “coarse count” cotton, C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday including April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, C.I.F. northern Europe (Northern Europe coarse count current price (NECCc)), and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, C.I.F. northern Europe (Northern Europe coarse count forward price (NECCf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week including April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(1) Weeks 1 and 2:  $(2 \times \text{NECCc}) + \text{NECCf}/3$ ;

(2) Weeks 3 and 4:  $(\text{NECCc} + \text{NECCf})/2$ ;

(3) Weeks 5 and 6:  $(\text{NECCc} + (2 \times \text{NECCf}))/3$ ; and

(4) Week 7 through July 31: The NECCf, minus:

(ii) The difference between the applicable loan rate for an upland cotton crop for M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM 1<sup>1</sup>/<sub>16</sub> inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton.

(iii) The result of the calculation as determined under this paragraph shall hereinafter be referred to as the “Northern Europe coarse count price.”

(3) Regarding the determination of the Northern Europe coarse 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 under paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) If the 6-week transition period from using current shipment prices to using forward shipment prices in the determination of the NE under paragraph (a)(2) of this section, and the Northern Europe coarse count price under paragraph (f)(2)(i)(B) of this section do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof to determine the NE and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton under paragraph (f)(1) of this section and determined under paragraph (f)(2) of this section to prevent distortions in such adjustment.

(h) The AWP determined under paragraph (c) of this section, shall be subject to further adjustments to a value no less than zero, as CCC determines, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced under the loan program for an upland cotton crop.

**Subpart B—[Reserved]****Subpart C—Upland Cotton User Marketing Certificates****§ 1427.100 Applicability.**

(a) Regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2008. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program under section 1207 of the Farm Security and Rural Investment Act of 2002.

(b) During the period beginning August 1, 1991, and ending July 31, 2008, CCC shall issue marketing certificates or cash payments to domestic users and exporters under this subpart in a week following a consecutive 4-week period in which:

(1) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch (M 1<sup>3</sup>/<sub>32</sub> inch) cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, (U.S. Northern Europe (USNE) price) exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, delivered C.I.F. northern Europe, (Northern Europe (NE) price) by:

(i) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(ii) During the period beginning August 1, 2006, and ending July 31, 2008, more than 1.25 cents per pound;

(2) The adjusted world price (AWP) for upland cotton, determined under § 1427.25, does not exceed 134 percent of the crop loan level for upland cotton.

(c) Additional terms and conditions are in the Upland Cotton Domestic User/Exporter Agreement which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe forms used in administering the upland cotton user marketing certificate program.

**§ 1427.101 [Reserved].****§ 1427.102 [Reserved].****§ 1427.103 Eligible upland cotton.**

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on

or before July 31, 2008, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2008, during a Friday through Thursday period in which a payment rate, determined under § 1427.107, is in effect and which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed notes which are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Re-ginned (processed) notes.

(c) Eligible upland cotton must not be:

(1) Cotton for which a payment, under the provisions of this subpart, has been made available;

(2) Imported cotton;

(3) Raw (unprocessed) notes; or

(4) Textile mill wastes.

**§ 1427.104 Eligible domestic users and exporters.**

(a) For purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of manufacturing such cotton into cotton products in the United States (domestic user), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible upland cotton for exportation from the United States (exporter), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment under this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions CCC issues.

**§ 1427.105 Upland 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 Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office, P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141-6205. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

**§ 1427.106 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 program participant.

**§ 1427.107 Payment rate.**

(a) Beginning July 18, 1996, and ending July 31, 2008, the payment rate for purposes of calculating payments made under this subpart shall be determined as follows for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(1) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price, the Northern Europe forward (NEf) price, the U.S. Northern Europe current (USNEc) price, and the U.S. Northern Europe forward (USNEf) price first become available, the payment rate shall be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the U.S. Northern Europe (USNE) price, minus 1.25 cents per pound, and the Northern Europe (NE) price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNE price and the NE price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNE price, minus 1.25 cent per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by:

(iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;

(v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted work price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which

the NEc, the NEf, the USNEc, and the USNEf prices first become available and ending the Thursday following July 31, the payment rate shall be:

- (i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price;
- (ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEc price and the NEc price; and
- (iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by:
- (iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;
- (v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and
- (vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted world price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period.

(3) If either or both the USNEc price and the NEc price are not available, the payment rate may be:

- (i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price;
- (ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEf price and the NEf price; and
- (iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of NE, NEc, and NEf prices only for one to three weeks, such as occurs in the spring when the NE price is succeeded by the NEc and the NEf prices (Spring transition), and at the start of a new marketing year when the NEc and the NEf prices are succeeded by the NE price (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc and USNEc prices in combination with the NE and the USNE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the

USNEc price and the NEc price are not available, the USNEf and NEf prices in combination with the USNE and NE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart:

(1) For the determination of the USNE, USNEc, USNEf, NE, NEc, and the NEf prices:

(i) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not consider a week in which no daily quotes are available for the entire 5-day period for either or both the USNE and the NE during the period when only one daily price quotation is available for each growth quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, delivered cost insurance, and freight (C.I.F.) northern Europe, or the USNEc and the NEc, or the USNEf and the NEf. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined under paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc, the marketing year transition shall be implemented immediately.

(2) Regarding the determination of the USNE, the USNEc, and the USNEf, if a quotation for either the U.S. Memphis territory or the California/Arizona territory, as quoted for M 1<sup>3</sup>/<sub>32</sub>-inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, available quotation(s) will be used.

(d) Payment rates for semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

#### § 1427.108 Payment.

(a) Payments under this subpart shall be determined by multiplying:

- (1) The payment rate, determined under § 1427.107, by
- (2) The net weight (gross weight minus the weight of bagging and ties), determined under paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens or an eligible exporter sold for export during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the cotton was based (landed mill weight);

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered—

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date CCC determines is the date on which the cotton is shipped through July 31, 2008.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchase and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the CCC-issued provisions of the Upland Cotton Domestic User/Exporter Agreement.

#### Subpart D—Recourse Seed Cotton Loans

##### § 1427.160 Applicability.

(a) This subpart is applicable to the 2002 through 2007 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 which 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 shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

**§ 1427.161 Administration.**

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, 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.

(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 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**

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**Subpart F—[Reserved].**

**Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

**§ 1427.1200 Applicability.**

(a) These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program under section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 and section 1208 of the Farm Security and Rural Investment Act of 2002.

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient under this subpart, in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Friday through Thursday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe, is less than the Friday through Thursday adjusted average domestic spot price quotation for base quality U.S. Pima cotton, as determined by the Secretary for purposes of administering the ELS Cotton Competitiveness Payment Program, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined under § 1427.1207, is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton as determined by the Secretary.

(c) Additional terms and conditions may be in the ELS Cotton Domestic User/Exporter Agreement, which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe the forms to be used in administering the ELS cotton competitiveness payment program.

**§ 1427.1201 [Reserved].**

**§ 1427.1202 Definitions.**

*Consumption* means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

*Cotton product* means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

*Current shipment price* means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

*Forward shipment price* means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

*LFQ* means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday-through-Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost, insurance, and freight C.I.F. northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C.I.F. northern Europe.

(2) *Forward LFQ* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C.I.F. northern Europe.

*Spot price* means the Friday-through-Thursday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for base quality U.S. Pima, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be a weighted average of the two

quotations, as determined by the Secretary. If only one quotation is available, that quotation will be used.

**§ 1427.1203 Eligible ELS cotton.**

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

- (1) Opened by an eligible domestic user on or after October 1, 1999, or
- (2) Exported by an eligible exporter on or after October 1, 1999, during a 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 reginned (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 (domestic user), and 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 (exporter), and who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications under this subpart must contain documentation required by the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions.

**§ 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 Thursday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. 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 current LFQ and the forward LFQ may first become available and ending the Thursday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, current LFQ and forward LFQ for only one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ (Spring transition) and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year

transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be 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 the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

#### **§ 1427.1208 Payment.**

(a) Payments 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-Thursdays 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 reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the

net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) 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 the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement.

### **PART 1430—DAIRY PRODUCTS**

9. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c.

10. Amend Subpart A by revising it to read as follows:

#### **Subpart A—Price Support Program for Milk** Sec.

1430.1 Definitions.

1430.2 Price support levels and purchase conditions.

##### **§ 1430.1 Definitions.**

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

*AMS* means the Agricultural Marketing Service, USDA.

*CCC* means the Commodity Credit Corporation, USDA.

*FSA* means the Farm Service Agency, USDA.

*USDA* means the United States Department of Agriculture.

##### **§ 1430.2 Price support levels and purchase conditions.**

(a)(1) The level of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows is \$9.90 per hundredweight for calendar year 2002 through 2007.

(2) Subject to paragraph (b) of this section, price support for milk will be made available through CCC purchases of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of FSA's purchase announcements.

(3) CCC purchase prices for dairy products will be announced by a USDA news release.

(4) CCC may, by special announcement, offer to purchase other dairy products to support the price of milk.

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from CCC.

(b)(1) The block cheese purchased shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk purchased shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter purchased shall be U.S. Grade A or higher.

(c) The products purchased shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by USDA-issued inspection certificates.

11. Amend Subpart B by revising it to read as follows:

#### **Subpart B—Milk Income Loss Contract Program** Sec.

- 1430.200 Applicability.
- 1430.201 Administration.
- 1430.202 Definitions.
- 1430.203 Eligibility.
- 1430.204 Requesting benefits.
- 1430.205 Selection of starting month.
- 1430.206 Transition payments.
- 1430.207 Dairy operation payment quantity.
- 1430.208 Payment rate and dairy operation payment.
- 1430.209 Proof of marketings.
- 1430.210 MLC agents.
- 1430.211 Duration of contracts.
- 1430.212 Contract modifications.
- 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.

**§ 1430.200 Applicability.**

(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.

**§ 1430.202 Definitions.**

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.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), FSA or a designee.

*Eligible production* means milk that was produced by cows in the United States and marketed commercially anytime during the period of December 1, 2001, through September 30, 2005, up to a maximum of 2.4 million pounds per dairy operation per fiscal year.

*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* means the year beginning October 1 (except December 1 for fiscal year 2002) and ending the following September 30 and such that, for example, fiscal year 2003 will run from October 1, 2002 through September 30, 2003.

*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, including the District of Columbia, and the Commonwealth of Puerto Rico, or any other State, 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.

*Transition period* means the period from December 1, 2001, until the time the dairy operation enters into MILC contract with CCC, provided that CCC may set such a deadline for the signing of the transition contract as it deems appropriate in order to accomplish the purposes of the contract.

*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 State, 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 December 1, 2001, through September 30, 2005;

(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 at the time of signing the Milk Income Loss Contract.

(g) In administering this program, the eligibility determination of "dairy operation" shall be made in the same manner as Dairy Market Loss Assistance (DMLA) contracts in that State. New MILC operations must be unaffiliated with prior DMLA operations.

**§ 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) Except as provided in § 1430.206 and beginning with the 2003 Fiscal Year, a dairy operation that enters into a MILC, and does not want its payments to begin with the first month of the fiscal year, must designate the starting month that it desires CCC to begin making payments to them. The starting month must be selected on or before the 15th of the month before the month for which payment is sought. A dairy operation cannot select a month for payment which:

- (1) Has already begun;
- (2) Has already passed; or
- (3) During which no milk was produced by the dairy operation.

(b) Dairy operations may change the starting month on or before the first day of 15th of the month before the month previously selected. Otherwise, the starting month cannot be changed until the next Fiscal Year. If the selected starting month is never modified, it will remain the same throughout the duration of the contract.

(c) MILC payments will be made consecutively to the dairy operation on a monthly basis after the starting month has been designated until the earlier of the following:

(1) The maximum payment quantity is reached as determined in accordance with § 1430.207; or

(2) The end of the applicable Fiscal Year.

(d)(1) Dairy operations that do not designate the month to begin receiving payments from CCC will be issued consecutive payments on a monthly basis, on marketed milk production beginning in the first month of the fiscal year, unless FSA is otherwise notified that selection will be made at a later date.

(2) Dairy operations that desire payments to begin with the first month of the fiscal year will receive payments made by CCC consecutively on a monthly basis until the earlier of the following:

(i) The maximum payment quantity is reached as determined in accordance with § 1430.207; or

(ii) The end of the applicable fiscal year.

(e) 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.

**§ 1430.206 Transition payments.**

(a) MILC program participants shall receive a payment calculated under § 1430.208 on the quantity of eligible production marketed by the dairy operation during the period beginning December 1, 2001, and ending on the last day of the month preceding the month the operation's MILC is executed.

(b) Transition payments are subject to the following:

(1) The maximum payment quantity on eligible production, as described in § 1430.207;

(2) Consecutive monthly payments beginning on December 1, 2001, and if applicable the beginning of the fiscal year thereafter, until the earlier of the following is reached for a particular fiscal year:

(i) The maximum applicable payment quantity is reached as determined in accordance with § 1430.207; or

(ii) The end of the applicable fiscal year.

(c) With respect to the 2002 Fiscal Year, the dairy operation may elect to forgo their transition payment and choose to begin receiving payments in September, 2002 in accordance with § 1430.205.

(d) Notwithstanding any other provisions in this subpart, dairy

operations that go out of business after December 1, 2001, may enter into a MILC with CCC for a transition payment on the quantity of eligible production marketed by the dairy operation during the transition period while the dairy operation was in business.

**§ 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.

(b) The maximum quantity of eligible production for which dairy operations are eligible for payment per any fiscal year, including any in the transition year, under this subpart shall be 2.4 million pounds (24,000 cwt.) per separate and distinct operation. In accordance with these regulations, the Deputy Administrator shall determine what is a separate and distinct operation and that decision shall 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 exceeds \$16.94.

(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; and
- (2) Multiplying the difference, if positive, by 45 percent.

(c) 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 paragraph (b) 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 these regulations.

(d) Payments under this subpart may be made to a dairy operation only up to the first 2.4 million pounds of eligible milk production per applicable fiscal year, including any year in the transition period.

(e) Dairy operations receiving benefits under this subpart, will receive payments on a monthly basis according to the MILC, to the extent practicable, not later than 60 days after the

production evidence and all supporting documents for the applicable month are received by CCC. Payments issued by CCC later than 60 days after all production evidence and supporting documentation are received by CCC will be subject to prompt payment interest as allowed by law.

**§ 1430.209 Proof of marketings.**

(a) A dairy operation entering into an 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 December 1, 2001, and ending September 30, 2005. 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 FSA 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 and 1430.206, or elsewhere in this subpart, contracts under this subpart 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 contract and ending on September 30, 2005.

(b) If a dairy goes out of business during the contract period, the MILC will be terminated immediately, except as applicable to earned payments.

**§ 1430.212 Contract modifications.**

(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.

**§ 1430.213 Reconstitutions.**

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of their operation is reconstituted in another organizational framework. However, any operation that changes after December 1, 2001, is subject to a review by FSA to determine if the operation was reorganized for the sole purpose of receiving multiple 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 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 of 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 for 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 FSA 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 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.

**PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LOAN DEFICIENCY PAYMENTS FOR HONEY**

18.–19. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 7931.

20. Revise § 1434.1 to read as follows:

**§ 1434.1 Applicability.**

This part provides the terms and conditions of Commodity Credit Corporation (CCC) nonrecourse marketing assistance loans or loan deficiency payments for honey. Marketing loan gains and loan deficiency payments shall be limited per person in the amounts set out in part 1400 of this chapter.

21. Amend § 1434.6 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively, and adding a new paragraph (b) to read as follows:

**§ 1434.6 Beneficial Interest.**

\* \* \* \* \*

(b) For the 2002 crop of honey, in the case of producers that would be eligible for a loan deficiency payment under this section except for the fact that the producers lost beneficial interest in the crop before October 18, 2002, the

producers shall be eligible for a loan deficiency payment as of the date producers marketed or otherwise lost beneficial interest in the honey, as determined by the Secretary.

\* \* \* \* \*

22. Amend § 1434.10 by revising paragraph (a) to read as follows:

**§ 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.

\* \* \* \* \*

23. Amend § 1434.18 by revising the introductory text of paragraph (a) to read as follows:

**§ 1434.18 Loan Repayments.**

(a) A honey producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

\* \* \* \* \*

24. Amend § 1434.21 by revising paragraphs (a), (b)(3) and (f)(1) to read as follows:

**§ 1434.21 Loan deficiency payments.**

(a) Loan deficiency payments shall be available for 2002–2007 crop honey.

(b) \* \* \*

(3) Submitted a request for a honey Loan deficiency payment on the form as CCC prescribes.

\* \* \* \* \*

(f) \* \* \*

(1) The producer will provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest when submitting a request for a honey loan deficiency payment; and

\* \* \* \* \*

**§ 1434.23 [Amended]**

25. Amend § 1434.23 by removing paragraph (c).

Signed in Washington, DC, on October 11, 2002.

**Teresa C. Lasseter,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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